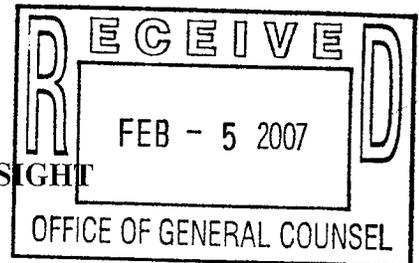


UNITED STATES OF AMERICA
OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT



In the Matter of:

FRANKLIN D. RAINES,
J. TIMOTHY HOWARD, and
LEANNE G. SPENCER,
Respondents.

Notice Number 2006-1

Judge William B. Moran

**MEMORANDUM IN OPPOSITION TO OFHEO'S MOTION TO STRIKE
OR LIMIT DISCOVERY REQUESTS FROM RESPONDENT FRANKLIN D. RAINES**

The Office of Federal Housing Enterprise Oversight ("OFHEO") contends that it has virtually no obligation to produce documents to Mr. Raines in this proceeding, other than those pre-hearing disclosures required by 12 C.F.R. § 1780.34. *See* OFHEO's Mot. to Strike or Limit Discovery Requests From Resp't Franklin D. Raines ("OFHEO Mot."), at 12-29. This extreme position contravenes OFHEO's Rules and Practices of Procedure (*see* 12 C.F.R. § 1780.27). Having spent more than two years publicly accusing Mr. Raines of fraud and having chosen to file a Notice of Charges against Mr. Raines seeking hundreds of millions of dollars in penalties, OFHEO must now produce the documents it contends support its allegations, as well as the many documents that will disprove its charges.

OFHEO has moved to strike Mr. Raines's discovery requests on three grounds: first, that various unspecified documents are protected by certain privileges; second, that OFHEO has already produced certain documents to Mr. Raines pursuant to a third-party *subpoena duces tecum* issued in an another case, *see In re Fannie Mae Sec. Litig.*, Civ. No. 1:04-cv-01639 (D.D.C.) ("MDL"); and third, that certain of Mr. Raines's requests are overbroad and seek

irrelevant material. OFHEO Mot. at 1-9. Each of these objections is unfounded. Each of these objections is easily dispensed with. Mr. Raines agrees that OFHEO need not produce in this proceeding any documents it has already produced in the MDL. OFHEO's remaining objections are either premature and do not require the Court's attention at this time, such as OFHEO's blanket claims of privilege made without even attempting to identify the documents over which the privilege is claimed, or unwarranted, such as OFHEO's refusal to produce documents concerning the very allegations of the Notice of Charges ("NOC"). See OFHEO Mot. at 12-29.

Accordingly, the Court should deny OFHEO's motion.

I. OFHEO's Production of Documents in the MDL, Pursuant to a Protective Order, Is Not a Substitute for Adequate Production in This Proceeding.

OFHEO is not correct that Mr. Raines's document requests are "repetitive of previous requests."¹ First, because OFHEO has designated as confidential virtually all of the documents it has produced in the MDL, those documents may not be used in any other litigation, including this proceeding, absent OFHEO's consent. See Amended Stipulated Pretrial Protective Order ("Protective Order") ¶ 9 (noting that documents designated as confidential "shall not be used for any other purpose or be revealed to parties or counsel in any action other than the [MDL], unless the Court otherwise directs or the producing party otherwise agrees") (attached as Ex. 1). OFHEO's objection that it has *already produced* certain responsive documents in the MDL is therefore without merit. Nevertheless, if OFHEO agrees to allow Mr. Raines to use in

¹By their plain language, OFHEO's Rules and Practices of Procedure are concerned only about discovery requests that are repetitive of requests made in the same *OFHEO proceeding*. See 12 C.F.R. § 1780.26(b). The policy reasons for that construction are sound. Here, for example, OFHEO may have greater obligations when responding as a party in the proceeding it commenced than it would as a third party. The discovery requests at issue in OFHEO's Motion are the first discovery requests made of OFHEO by Mr. Raines in this administrative proceeding. Hence, Mr. Raines's requests cannot be stricken or limited for being "repetitive."

this action those documents it has produced in the MDL,² then Mr. Raines will not seek the production of those same documents in this proceeding.

Second, OFHEO has not established that the documents Mr. Raines sought in the MDL are co-extensive with the documents sought in this proceeding. The Court's authority to deny or modify discovery requests is limited to requests that "call[] for irrelevant material, [are] unreasonable, oppressive, excessive in scope, unduly burdensome, or *repetitive of previous requests*, or seek[] to obtain privileged documents." 12 C.F.R. § 1780.27(g) (emphasis added). In the MDL, Mr. Raines caused two *subpoenas duces tecum* to be served on OFHEO on July 18 and 24, 2006. *See* Raines July 18, 2006 Subpoena (attached as Ex. 2); Raines July 24, 2006 Subpoena (attached as Ex. 3). OFHEO has made no effort to meet its obligation to establish that Mr. Raines's two subpoenas seek *precisely the same documents* as the eighty-three present document requests. *See, e.g., Alexander v. FBI*, 194 F.R.D. 299, 302 (D.D.C. 2000) ("By simply objecting to the plaintiffs' request [for production of documents] without specifically referring to any documents already produced or describing the relevant search already performed, [defendant] has not met her burden of demonstrating that this request is in fact unreasonably cumulative or duplicative." (quotation omitted)); *Hoh Co. v. Travelers Indem. Co.*, Civ. A. No. 87-0274, 1991 WL 229948, at *2 (D.D.C. Oct. 25, 1991) ("[I]t is unclear that the discovery sought by defendant is unreasonably duplicative, and it is equally unclear that defendant has had ample opportunity to obtain the information. This is because neither plaintiffs' motion nor the case file reveals the extent of defendant's pre-trial discovery As a result, plaintiffs fail to demonstrate that the current discovery request by defendant is unreasonably cumulative");

² OFHEO has indicated informally that it will provide such consent, but does not articulate that position clearly in its Motion. Nevertheless, OFHEO's argument—i.e., that it should not be

see also Order, *In re Certain Flash Memory Chips, Flash Memory Sys. & Prods. Containing the Same*, Inv. No. 337-TA-570, 2006 WL 2282082 (U.S.I.T.C. Aug. 2, 2006) (denying bank's motion to limit a subpoena which purportedly sought discovery duplicative of that which the respondent obtained in federal court in part because the bank failed to provide any particulars about the discovery or subpoena issued in the federal court litigation).

To the extent that OFHEO has already produced documents in the MDL and agrees to allow Mr. Raines to use those documents in this proceeding, OFHEO need not produce those documents again here. Nevertheless, OFHEO remains obligated to produce the remaining documents that are responsive to Mr. Raines's document requests.

II. For the Sake of Efficiency, Mr. Raines Hereby Modifies and Limits the Requests that OFHEO Has Improperly Characterized as Unduly Burdensome.

OFHEO asserts, without proffering any factual basis, that Mr. Raines's discovery "requests encompass virtually every document relating to one of the two enterprises regulated by OFHEO," and threaten to "seriously hinder" OFHEO's normal operations. *See* OFHEO Mot. at 8. Such conclusory assertions—which are lodged only against five of Mr. Raines's requests, *see* OFHEO Mot., Request Nos. 1, 4, 14, 15, 17—cannot serve as a basis for striking those requests. *See Hammerman v. Peacock*, 108 F.R.D. 66, 67 (D.D.C. 1985) (finding that parties "cannot avoid a legitimate scope of discovery solely by invoking the phrases that production or responding will be overly burdensome or unduly expensive"). Nevertheless, Mr. Raines agrees

compelled to make a duplicative production—necessarily assumes that it will consent to the use of its document production in the MDL.

to limit or withdraw those requests to which OFHEO specifically objects on the grounds that they are excessive in scope or unduly burdensome.³

Request No 1:

- Raines Original Request: “All documents reflecting any communications between you and any individual you [OFHEO] intend to call as a witness in the adjudicatory hearing *In The Matter of Franklin D. Raines, et al.*”
- OFHEO Objection: “This request is not limited in time or scope.” OFHEO Mot. at 12.
- Raines Modified Request: “All documents reflecting any communications, concerning any topic discussed or referenced in the Notice of Charges that occurred from January 1, 1998 to the present between you and any individual that you intend to call as a witness in the adjudicatory hearing *In The Matter of Franklin D. Raines, et al.*”

Request No.4

- Withdrawn.

Request No. 14:

- Raines Original Request: “Copies of all Fannie Mae minimum capital reports submitted to OFHEO and all documents relating to them.”
- OFHEO Objection: “The minimum capital report submitted to OFHEO will be provided. . . . OFHEO objects to and moves to strike or limit the remaining portion of the request as the request . . . is not limited to the period covered by the Notice of Charges.” OFHEO Mot. at 14.
- Raines Modified Request: “Copies of all Fannie Mae minimum capital reports submitted to OFHEO from January 1, 1998, through December 31, 2004, and copies of any declarations and cover letters accompanying those reports.”

Request No. 15:

- Raines Original Request: “Copies of all Fannie Mae annual reports and all documents relating to them.”

³ OFHEO objects to these requests on other grounds, as well, such as that the requests are not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action. Objections not pertaining to scope and undue burden are addressed elsewhere in this Response.

- OFHEO Objection: “The Fannie Mae annual reports submitted to OFHEO will be provided. . . . OFHEO objects to and moves to strike or limit the remaining portion of the request as the request . . . is not limited to the period covered by the Notice of Charges.” OFHEO Mot. at 15.
- Raines Modified Request: “Copies of all Fannie Mae annual reports from January 1, 1998, through December 31, 2004, and the cover letters accompanying those reports.”

Request No. 17:

- Raines Original Request: “All documents concerning Roger Barnes.”
- OFHEO Objection: “OFHEO objects and moves to strike or limit this request as the request is vague” OFHEO Mot. at 15.
- Raines Modified Request: “All documents concerning any communications between OFHEO and any Fannie Mae officer, director, or employee regarding Roger Barnes that occurred from January 1, 1998, through the present; all documents concerning any communications between OFHEO and KPMG regarding Roger Barnes that occurred from January 1, 1998, through the present; all documents provided to you by Fannie Mae from January 1, 1998, through the present concerning Roger Barnes; and all documents relating to concerns raised by Roger Barnes over Fannie Mae’s accounting.”

Each of these requests, as modified, is narrowly tailored to seek materials relevant to the allegations of the Notice of Charges and the proof that OFHEO will be required to advance in attempting to carry its burden of proving the charges.

III. Each of Mr. Raines’s Requests Is Reasonably Calculated To Seek Materially Relevant Information.

OFHEO’s regulations entitle Mr. Raines to “document discovery regarding any matter not privileged that has material relevance to the merits of the pending action.” 12 C.F.R. § 1780.26(b). As such, all documents bearing on the allegations of the Notice of Charges are the proper subject of discovery. *See* Final Enforcement Decision, *In re Incus Co.*, Nos. 98-038-B-FHC, 98-038-B-I, 98-038-CMP-FHC, 98-038-CMP-I, 98-038-E-I, 86 Fed. Reserve Bulletin 246, 249-50 (F.R.B. 2000) (“[I]nformation bearing on [the charges made by an agency] is of ‘material relevance to the merits of the pending action’ and a proper subject of discovery.” (interpreting a

regulation, 12 C.F.R. § 263.24(b), with wording identical to 12 C.F.R. § 1780.26(b)). Each of the requests to which OFHEO objects as “not reasonably calculated to seek any materially relevant information,” in fact seeks documents directly related to disproving OFHEO’s charges against Mr. Raines.⁴

A. Document Requests Nos. 9-13

These requests seek “[a]ll documents reflecting communications between [OFHEO] and Fannie Mae relating to potential legal claims by [OFHEO] or Fannie Mae against Mr. Raines,” his co-defendants J. Timothy Howard and Leanne Spencer, Fannie Mae’s external auditor KPMG LLP, and any other current or former Fannie Mae employee arising out of the conduct alleged in the Notice of Charges. Communications between OFHEO and Fannie Mae concerning the strength of OFHEO’s claims against the Respondents, or the culpability of others who OFHEO chose not to sue, are directly relevant to this proceeding. These communications may well include admissions by OFHEO that its claims against Mr. Raines are weak, representations by Fannie Mae personnel that the company was not injured by any alleged wrongdoing by Mr. Raines, or admissions by OFHEO or Fannie Mae that other unnamed parties are responsible for the alleged wrongdoing. Notably, OFHEO’s own document requests to Mr. Raines seek all communications between him and “any individual[s]” concerning the Special Examination or the Notice of Charges. *See* OFHEO’s First Set of Document Requests To Resp’t Franklin D. Raines, Requests Nos. 1-2, 5-6. OFHEO cannot now complain that Mr. Raines’s similar, and substantially more narrow, requests seek irrelevant information.

⁴ As explained in Part II, Mr. Raines has agreed to limit Requests Nos. 1, 14, 15, and 17 and has withdrawn Request No. 4 in response to OFHEO’s objections regarding the breadth of those requests.

B. Document Request No. 33

This Request seeks only “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.” (Request No. 33 (emphasis added).) By its plain terms, the Request seeks only information relevant to the Notice of Charges. To the extent that OFHEO is in possession of documents identifying individuals with information relevant to those charges, but who may be unavailable to testify, OFHEO must provide Mr. Raines with that information so that he may seek to preserve their testimony through other means.

C. Document Requests Nos. 8, 19-20, 22, 26-28, and 30-31

In its Motion, OFHEO concedes “[i]n the course of the Special Examination, OFHEO determined, *inter alia*, that sufficient evidence existed to support the issuance of a Notice of Charges against Mr. Raines.” OFHEO Mot. at 2. Each of the referenced requests seeks information concerning documents provided to OFHEO in connection with its Special Examination of Fannie Mae, which formed the basis of the charges against Mr. Raines.⁵ In particular, the requests seek: (1) documents provided to OFHEO by KPMG LLP, which served as Fannie Mae’s external auditor during Mr. Raines’s tenure and which annually assured Mr. Raines and the Board that Fannie Mae’s accounting policies complied with GAAP; (2) documents relating to OFHEO’s retention, for the purposes of the Special Examination, of Deloitte & Touche LLP, an accounting firm that advised Fannie Mae during Mr. Raines’s tenure, that Fannie Mae currently employs as outside auditor, and that likely will serve as a witness for OFHEO in this proceeding; (3) documents provided to OFHEO by other third parties during the course of the Special Examination, such as the consultants and investment banking and insurance

⁵ The Notice of Charges incorporates the findings of the Special Examination. *See* NOC at 1.

firms that advised Fannie Mae on many of the transactions and policies now challenged in the Notice of Charges; (4) drafts of the Special Examination that may well be used to cross-examine OFHEO's expert witnesses (including those that assisted in the Special Examination) or employees; and (5) documents exchanged between OFHEO and the Special Review Committee of the Board of Directors of Fannie Mae, which issued its own report contradicting many of the findings made by OFHEO. Because the Special Examination Report provides the basis for the Notice of Charges, the documents that underlie that Report are directly relevant to this action.

D. Document Requests Nos. 25, 29.

These requests seek communications regarding the Notice of Charges and Special Examination between OFHEO and Wayne Abernathy, Assistant Secretary of the Treasury, and FM Watch (now known as FM Policy Focus), a lobbying group "dedicated to monitoring the activities of two government-subsidized enterprises (GSEs), Fannie Mae and Freddie Mac." <http://www.FMPolicyFocus.org/about/>. Mr. Raines has reason to believe that OFHEO engaged in communications with Mr. Abernathy and FM Watch concerning the findings of its Special Examination and the filing of its Notice of Charges. Such communications likely relate to the factual allegations of the Notice of Charges and any factual support for the charges, or the lack thereof.

E. OFHEO's Special Examination Reports

OFHEO lodges a general objection (not linked to any particular request) that the Agency's annual safety and soundness examinations of Fannie Mae are "not at issue in this action." OFHEO Mot. at 9-11. To the extent that OFHEO's general objection seeks to strike or limit an unspecified request or requests, any objections to such requests have been waived. Pursuant to 12 C.F.R. § 1780.27(d)(1), such "general objections" to select aspects of a discovery request do not suffice in a motion to strike. If an objection is being "made to only a portion of an

item or category in a request, the objection shall specify that portion. Any objections not made in accordance with this paragraph and § 1780.25 are waived.” Because OFHEO does not identify which portion or portions of Mr. Raines’s discovery request should be stricken on this ground, its objection cannot be sustained.

Even if OFHEO’s general objection were properly presented, it would still fail. OFHEO’s position misapprehends the relevance of its safety and soundness examinations to the charges against Mr. Raines. OFHEO’s citation to various district court cases for the proposition that OFHEO “owed no duty to Mr. Raines in the conduct of [its] safety and soundness examinations” and that “Mr. Raines may not now attack Fannie Mae’s regulator in order to avoid his own culpability,” OFHEO Mot. at 10, misses the point. OFHEO’s representations to Mr. Raines, and the nature of the policies reviewed by OFHEO, are relevant not because OFHEO owed some duty to Mr. Raines, but rather because these facts demonstrate that Mr. Raines did not seek to hide the policies at issue from OFHEO but reasonably believed, based on OFHEO’s conduct, that his own conduct was lawful and consistent with safety and soundness standards. *Cf. Alexander v. FBI*, 194 F.R.D. 316, 326 (D.D.C. 2000) (“[D]iscovery is not to be denied because it relates to a claim or defense that is being challenged as insufficient.” (quoting 8 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2008 (2d. ed. 1994))). OFHEO chose to proceed under the theory that Mr. Raines is liable for “second” or “third tier” penalties due to his alleged “reckless[]” or “knowing” commission of violations.⁶ See 12 U.S.C.

⁶ The cases that OFHEO cites in support of the proposition that Mr. Raines cannot use the alleged conduct of OFHEO as a central element in his defense concern inapposite legal defenses. For example, two cases cited by OFHEO reject, based on the facts of those cases, *equitable estoppel arguments* proffered as affirmative defenses by the defendant banks. See, e.g., *Resolution Trust Corp. v. Heiserman*, Civ. A. No. 93-B-944, 1994 WL 907409, at *1 (D. Colo. Aug. 31, 1994); *Fed. Sav. & Loan Ins. Corp. v. Shelton*, 789 F. Supp. 1367, 1370 (M.D. La. 1992). Here, OFHEO’s examination documents are directly relevant to *Mr. Raines’s mental*

§ 4636(b)(2) (second tier penalties to be imposed for misconduct involving “recklessness”); 12 U.S.C. § 4636(b)(3) (third tier penalties to be imposed for “knowing” misconduct). OFHEO’s contemporaneous knowledge and approval of Mr. Raines’s conduct, as reflected in OFHEO’s safety and soundness examinations, are relevant to establish, *inter alia*, whether Mr. Raines acted with knowledge of the alleged wrongdoing or acted recklessly.

IV. OFHEO Has Failed To Satisfy the Procedural and Substantive Requirements for Asserting Claims of Privilege.

OFHEO’s general assertion that certain unidentified documents are purportedly protected by a raft of privileges, including bank examination, deliberative process, investigative files, attorney work product, and attorney-client privileges, is insufficient to support the Motion to Strike. To withhold documents on grounds that they are protected by an applicable privilege, OFHEO must create a log that reasonably identifies the documents being withheld, together with a statement of the basis for the assertion of the privilege. *See* 12 C.F.R. § 1780.27(e). The privilege log should contain information adequate to allow the demanding party to exercise its right to challenge the privilege assertions and seek the compulsion of such documents, pursuant to 12 C.F.R. § 1780.27(f). Claims of privilege cannot be asserted adequately unless the agency sets forth “facts establishing *each element* of the privilege claim.” *Alexander v. FBI*, 186 F.R.D. 102, 106 (D.D.C. 1998) (emphasis added) (quotation omitted); *see also Mass. Sch. of Law v. Am. Bar Ass’n*, 914 F. Supp. 1172, 1178 (E.D. Pa. 1996) (“[A] party who alleges privilege as a reason for not complying with a subpoena has the burden of proof to assert specific facts relating to

state. Cf. Stamp v. Brown, No. 81-C-1475, 1991 WL 169377, at *2 (N.D. Ill. Aug. 28, 1991) (cited by OFHEO for striking defendants’ affirmative defenses to the extent defendants argued that the regulators’ negligence shielded them from liability for their own fraudulent conduct with respect to the insurance company of which they had been officers and directors but acknowledging that evidence of what the regulators knew or did with regard to the insurance company might be admissible for other purposes).

specific documents and cannot rely on conclusory statements.”). Without such identification of the documents at issue, it is impossible to evaluate the merits of OFHEO’s claimed privileges.⁷

Further, in the case of qualified, common law executive privileges such as the deliberative process and examination privileges, the assertion of privilege also “requires: (1) a formal claim of privilege by the ‘head of the department’ having control over the requested information; [and] (2) [an] assertion of the privilege based on actual personal consideration by that official.” *Landry v. FDIC*, 204 F.3d 1125, 1135 (D.C. Cir. 2000). Far from mere formalities, these procedural requirements “ensure that the privilege is presented in a deliberate, considered, and reasonably specific manner.” *In re Sealed Case*, 856 F.2d 268, 271 (D.C. Cir. 1988). Before OFHEO can satisfy the applicable procedural requirements for invoking qualified, common law executive privileges, it must—as agencies routinely do—provide an affidavit from a sufficiently senior officer swearing to his or her personal consideration, on the agency’s behalf, of each and every document withheld as purportedly privileged. *See Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 145 (D.C. Cir. 2006); *Landry*, 204 F.3d at 1134-36; *Tuite v. Henry*, 98 F.3d 1411, 1417 (D.C. Cir. 1996); *Cobell v. Norton*, 213 F.R.D. 1, 8 (D.D.C. 2003). Until OFHEO attempts to meet these requirements, its claims of privilege cannot be adjudicated—and Mr. Raines is not seeking their adjudication.

⁷ Notably, OFHEO’s document requests seek, for any privilege claims that Mr. Raines might assert, the very information that OFHEO fails to provide. *See* OFHEO’s First Set of Document Requests To Resp’t Franklin D. Raines, Instruction 2; OFHEO’s Second Set of Document Requests To Resp’t Franklin D. Raines, Instruction 4.

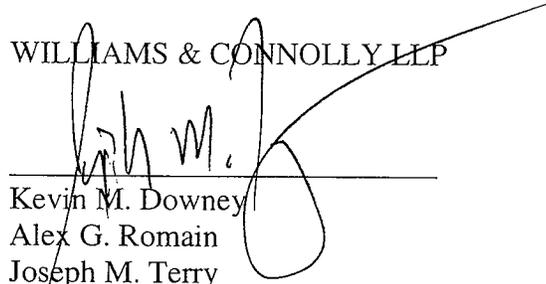
CONCLUSION

For the foregoing reasons, Mr. Raines respectfully requests that this Court deny OFHEO's "Motion to Strike or Limit Discovery Requests from Respondent Franklin D. Raines."

Dated: February 2, 2007

Respectfully submitted,

WILLIAMS & CONNOLLY LLP



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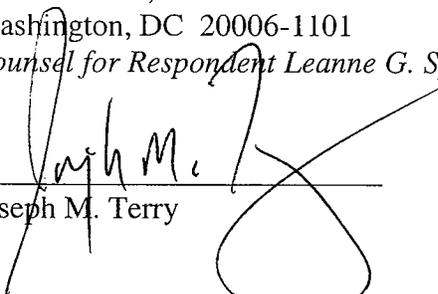
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2007, I caused to be served by hand delivery true and correct copies of Respondent Franklin D. Raines's Response to OFHEO's Motion to Strike or Limit Discovery Requests, with exhibits on:

Mr. David A. Felt, Esq.
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Joseph M. Terry



EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

FILED

OCT 20 2006

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**In Re Federal National Mortgage
Association Securities, Derivative, and
"ERISA" Litigation**

MDL No. 1668

In Re Fannie Mae Securities Litigation

Consolidated Civil Action No. 1:04-cv-01639

Judge Richard J. Leon

In re: Fannie Mae Derivative Litigation.

Consolidated Civil Action No. 1:04-cv-01783

Judge Richard J. Leon

In re Fannie Mae ERISA Litigation

Consolidated Civil Action No. 1:04-cv-01784

Judge Richard J. Leon

AMENDED STIPULATED PRETRIAL PROTECTIVE ORDER

It is hereby stipulated and agreed among the parties, and **IT IS HEREBY ORDERED** by the Court, that the following procedures shall govern the production of confidential documents, testimony, interrogatory answers, and other information in the actions captioned above¹:

Definitions

1. The following definitions shall apply to this Stipulated Protective Order ("Protective Order"):

¹ This stipulated protective order shall replace and supersede any previously entered protective order in the actions captioned above.

(2)

a. "Actions" shall refer to the above-captioned securities, derivative and ERISA cases pending in the United States District Court for the District of Columbia and any appeal of such actions through final judgment in the action.

b. The term "Discovery Material" encompasses, but it is not limited to: any type of document, transcripts of testimony, any taped, recorded, filmed, electronic, written or typed matter, including the originals and all marked copies, whether different from the originals by reasons of any notation made on such copies or otherwise; all deposition testimony; all interrogatories, document requests, and requests for admission, including all responses thereto; any physical objects or other items or any other information gained by inspection of any tangible thing, including data or code stored in electronic form.

c. "Confidential Information" shall mean Discovery Material which a party (i) takes reasonable precautions to maintain the confidentiality of the material, and (ii) in good faith believes constitutes confidential information in accordance with Fed. R. Civ. P. 26(c)(7) that is used by it in, or pertaining to, trade secrets, financial information, personal privilege or other personal information, or which information is not generally known and which that party would normally not reveal to third parties, or if disclosed, would require such third parties to maintain in confidence. "Confidential Information" shall not include documents or information that (i) is at any time independently developed without use of or reliance upon any of the producing party's Designated Discovery Material; (ii) is rightfully acquired from an independent source, without restrictions as to use or obligations as to confidence; (iii) was, prior to disclosure, rightfully in the possession or knowledge of the requesting party; (iv) is publicly available in substantially the same form in which it was provided by the producing party claiming confidentiality; (v) is required by law to be made available to third parties; (vi) was, is

or becomes public knowledge, not in violation of this Protective Order; or (vii) is voluntarily designated by the party producing the Discovery Material.

d. "Highly Confidential Information" shall mean Discovery Material that counsel in good faith believes constitutes, contains or reveals (i) information that relates to an individual that is of a purely personal nature, (ii) non-public communications, discussions, deliberations, or analyses regarding senior executive hiring initiatives at the Executive Vice President level and above; (iii) non-public communications, discussions, deliberations, or analyses regarding executive succession; (iv) internal, non-public communications, discussions, deliberations, or analyses regarding Board of Director succession or hiring initiatives; (v) information detailing competitively sensitive, non-public, compensation for non-officers, which, if made public, could put Fannie Mae at a competitive disadvantage; (vi) information concerning Fannie Mae's proprietary portfolio methodologies, strategies, modeling, and formulae; or (vii) information concerning the Ohio Public Employees Retirement System's and/or the State Teachers Retirement System's proprietary portfolio methodologies, strategies, modeling and formulae.

e. "Confidential Legend" shall mean a stamp or similar insignia stating "Confidential" or "Highly Confidential."

f. "Designated Discovery Material" shall mean Discovery Material designated as "Confidential" or "Highly Confidential" pursuant to this Protective Order as well as the contents of such Discovery Material.

Applicability

2. This Protective Order shall govern any Discovery Material produced by any party currently named or later joined in the Actions, including, in the case of parties other than individuals, their officers, directors, employees, and agents.

3. This Protective Order shall be fully applicable to material produced by or depositions taken of third parties and non parties, and any third party or non party from whom discovery is sought shall be entitled to designate material and testimony produced as Confidential Information pursuant to the terms of this Protective Order.

Designation of Material

4. Parties may designate any Discovery Material as Confidential Information in accordance with paragraph 1(c) herein, by applying to it the legend "Confidential" or "Highly Confidential." ("Designated Discovery Material") The legend shall be affixed in such a manner that the written material is not obliterated or obscured. Any Discovery Material so designated shall thereafter be treated pursuant to the appropriate provisions of this Protective Order. In the case of data stored in electronic form, the "Confidential" or "Highly Confidential" legend shall be printed on the cover or container of the disk, tape, or other medium in which the electronic form data is stored. A party making Discovery Material available for inspection, however, shall not have to apply a "Confidential" or "Highly Confidential" legend to those materials until such time as a party requests copies, if that ever occurs. During the period when Discovery Material is made available for inspection but not designated, it shall be treated as "Confidential."

5. With respect to testimony or deposition transcripts, the producing party shall have twenty-one (21) days from the date upon which the testimony is given to designate said testimony or any portion thereof as "Confidential Information" or "Highly Confidential

Information" within the meaning of this Protective Order. In the event that a party intends to use portions or excerpts of transcripts prior to the expiration of the 21 day period, such party shall give counsel for the deponent 48 hours to designate said testimony or any portion thereof as "Confidential Information" or "Highly Confidential Information" within the meaning of this Protective Order.

6. In the event that a producing party inadvertently fails to designate material as "Confidential" or "Highly Confidential" or designates material at a lower level of confidentiality pursuant to this Protective Order at the time of the production, the party shall be entitled to make a correction. Such correction and notice thereof shall be made in writing as soon as practicable. The producing party, at their cost, shall also provide substitute copies of each item of Discovery Material, appropriately designated, to all parties who previously received the misdesignated material. Those individuals who received the Discovery Material prior to notice of the misdesignation by the producing party shall within ten (10) business days of receipt of the substitute copies, destroy or return to the producing party all copies of such misdesignated documents. Those individuals who reviewed the misdesignated Discovery Material prior to notice of the misdesignation by the producing party shall abide by the provisions of this Protective Order with respect to the use and disclosure of any information contained in the misdesignated Discovery Material after receipt of the notice of misdesignation.

7. In the event a party produces two or more identical copies of a document and any such copy is designated with a lesser degree of confidentiality than any other copy, all such identical documents shall be treated in accordance with the most restrictive designation on any copy once the inconsistent designation is known. The producing party shall be responsible for informing the party receiving the inconsistently designated information of the inconsistent

designation; provided, however, if any person subject to this Protective Order receives such inconsistently designated information, and has actual knowledge of the inconsistent designation, the person shall treat all copies in accordance with the most restrictive designation.

Disclosure and Use of Confidential Information

8. Designated Discovery Material shall be treated in accordance with the terms of this Protective Order and is not to be communicated in any manner, directly or indirectly, to anyone other than the person qualified to receive such material under the terms and conditions set forth below.

9. Any Designated Discovery Material, and the information contained in such material (including extracts and summaries derived from such material), shall be used solely for prosecuting and defending the Actions and shall not be used for any other purpose or be revealed to parties or counsel in any action other than the Actions, unless the Court otherwise directs or the producing party otherwise agrees.

10. Discovery Material designated as "Confidential" shall not be disclosed directly or indirectly by the person receiving such material to persons other than (i) persons identified in the documents or through testimony as already having seen or received such "Confidential" material (excluding persons whose prior access to such Confidential material was known by the disclosing party to be unauthorized) and (ii) the following persons, as to whom disclosure shall be limited to the extent reasonably necessary for the prosecution, defense, and/or appeal of the Actions:

- a. The Court, persons employed by the Court, and the stenographers transcribing the testimony or argument at a hearing, trial, or deposition in the Actions or any appeal therefrom;
- b. Counsel for the parties in the Actions, whether or not counsel of record, including in-house counsel, associates, legal assistants, paralegals, secretarial and clerical employees, and outside services (including, without limitation,

copy services, litigation consulting services, and graphics services) who are assisting counsel in the prosecution, defense, and/or appeal of the Actions;

- c. Independent experts and consultants retained or employed by counsel in connection with the prosecution, defense, and/or appeal of the Actions, including their secretarial and clerical employees who are assisting in the prosecution, defense, and/or appeal of the Actions, provided that the requirements of Paragraph 12 below have been met;
- d. Any party currently named or later joined in the Actions, including, in the case of parties other than individuals, their officers, directors, employees, and agents, solely for the purpose of the prosecution, defense, and/or appeal of the Actions;
- e. Any person who will testify as a witness either at a deposition or a court proceeding in the Actions for the purpose of assisting in the preparation or examination of the witness, provided that the requirements of Paragraph 12 have been met;
- f. Any Court-appointed mediator or other individual acting pursuant to Court appointment; and
- g. Other persons upon further order of the Court or written consent of the producing party.

11. Except with the prior consent of the producing party or upon prior order of this Court, Discovery Material designated as "Highly Confidential" shall not be disclosed directly or indirectly by the person receiving such material to persons other than (i) persons identified in the documents or through testimony as already having seen or received such "Highly Confidential" material (excluding persons whose prior access to such Confidential material was known by the disclosing party to be unauthorized) and (ii) the following persons, as to whom disclosure shall be limited to the extent reasonably necessary for the prosecution, defense, and/or appeal of the Actions:

- a. The Court, persons employed by the Court, and the stenographers transcribing the testimony or argument at a hearing, trial, or deposition in the Actions or any appeal therefrom;
- b. Counsel of record for the parties in the Actions, including associates, legal assistants, paralegals, secretarial and clerical employees, and outside services

(including, without limitation, copy services, litigation consulting services, and graphics services) who are assisting counsel in the prosecution, defense, and/or appeal of the Actions;

- c. Independent experts and consultants retained or employed by counsel in connection with the prosecution, defense, and/or appeal of the Actions, including their secretarial and clerical employees who are assisting in the prosecution, defense, and/or appeal of the Actions, provided that the requirements of Paragraph 12 below have been met;
- d. Defendants;
- e. Any person who will testify as a witness either at a deposition or a court proceeding in the Actions for the purpose of assisting in the preparation or examination of the witness, provided that the requirements of Paragraph 12 have been met;
- f. Any Court-appointed mediator or other individual acting pursuant to Court appointment; and
- g. Other persons upon further order of the Court or written consent of the producing party.

12. The undersigned attorneys, as well as their clients, colleagues and any other personnel of their law firm or litigation support services assisting them in these Actions, agree to be bound by the terms of this Agreement. Other than disclosure of Confidential material and/or *Highly Confidential material* at a deposition, hearing, or trial, persons described in subparagraphs 10c, e, and g above, prior to being given access to any Confidential material, must be provided a copy of this Protective Order and sign the Acknowledgement attached as Exhibit A hereto agreeing to be bound by the terms of the Protective Order and agreeing to subject himself or herself to the jurisdiction of the Court for the purpose of enforcing the terms and conditions of this Protective Order. The Party providing the individual with Designated Discovery Material shall retain copies of all executed Acknowledgements. Said Acknowledgements will only be provided to the producing party as may be ordered by the Court. As parties to the Actions agree to be bound by the terms of the Protective Order, they are not

required to sign an Acknowledgement in order to receive Confidential material. Persons who receive Confidential material and/or Highly Confidential materials at a deposition, hearing, or trial who are not otherwise authorized to receive such information pursuant to paragraphs 10 and 11 above and who have not signed an Acknowledgement, may be shown and questioned about the Confidential and/or Highly Confidential materials during the deposition, hearing, or trial but will not be entitled to take possession of the Confidential material and/or Highly Confidential materials that were disclosed.

13. If a party desires to file Designated Discovery Material in Court, whether separately or with or as part of pleadings or other court papers, the party shall file the Designated Discovery Materials under seal if the producing party's consent, which shall not be unreasonably withheld, to the public filing of the materials has not been obtained. The Designated Discovery Material shall be filed in a sealed envelope or other appropriate container on which shall be endorsed the caption of this lawsuit; the title of the court paper or a brief description of the enclosed material; and the legend "Confidential" or "Highly Confidential." The provisions of this Protective Order do not modify the obligations to protect personal identifiers pursuant to L.Cv.R. 5.4(f) in any documents filed with the Court electronically regardless of whether any such information has been undesignated or designated "Confidential" or "Highly Confidential" pursuant to this Order.

14. If or when Designated Discovery Material is ever used during any deposition, hearing or other proceeding, other than at trial, counsel for the parties shall take appropriate steps to preserve the confidential substance of the Designated Discovery Material, unless otherwise required by Court order.

15. If a subpoena issued in any other action calls or arguably calls for the production by the recipient of the subpoena ("Recipient") of Designated Discovery Material produced to Recipient by any other person in this Action, then the Recipient shall:

a. be obligated, within three business days of the Recipient's receipt of the subpoena, to provide notice of the subpoena, as well as a copy of same, to the party who or which produced the Designated Discovery Material to the Recipient; and

b. the Recipient shall be permitted to respond in a timely manner to such subpoena without violation of this Protective Order if the foregoing notice is timely given and, within the period provided for response to such subpoena, the producing party has neither moved to intervene to seek a court order preventing disclosure of the Designated Discovery Material nor made other arrangements with the person or entity issuing the subpoena. If the producing party has moved to intervene to seek a court order preventing disclosure of the Designated Discovery Material, the Recipient will not disclose the Designated Discovery Material until such motion is adjudicated.

16. Except as agreed in writing by all parties to this Agreement or by order of the Court, persons having knowledge of another producing party's Designated Discovery Material by virtue of their participation in the conduct of this Action shall use that Designated Discovery Material only in connection with the prosecution, defense or appeal of the Actions, and shall neither use such Designated Discovery Material for any other purpose nor disclose such Designated Discovery Material to any person who is not permitted access to such Designated Discovery Material by this Protective Order.

17. The restrictions against disclosure set forth in this Protective Order shall not apply to any producing party's use of its own Designated Discovery Material.

18. If Designated Discovery Material is disclosed to any person other than in the manner authorized by this Protective Order, the requesting party or any other party responsible for this disclosure shall immediately: (1) provide written notice to the producing party; (2) make every effort to retrieve such material; and (3) prevent further disclosure by the person who was the recipient of such Designated Discovery Material. The written notice required by subparagraph (1) above shall include the names of all persons who improperly received Designated Discovery Material and a description of the Designated Discovery Material disclosed to such persons.

Objection to Confidential Information

19. At any time, a party may challenge a designation of material as "Confidential" or "Highly Confidential," or may object to the treatment of any information as deserving "Highly Confidential" treatment. In the event of such a challenge, the contesting party will have the burden of making an appropriate motion to the Court and obtaining a hearing upon such motion. At such hearing, the party producing the Designated Discovery Material shall have the burden of establishing the need for such status. Pending such determination by the Court, material designated by the producing party as "Confidential" or "Highly Confidential" shall be treated in accordance with the producing party's designation pursuant to this Protective Order.

Relief From Terms of Protective Order

20. This Protective Order is being entered without prejudice to the right of any party or other person to move the Court for relief separately, or to move the Court for modification of any of its terms on a going-forward basis.

21. The parties to this action anticipate utilizing one or more third party vendors for purposes of electronic production, storage, and maintenance of documents. In the event of an

unauthorized release of any privileged materials by any such vendor, the producing party shall be entitled to have any and all copies of such documents returned and/or destroyed at the producing party's option. Such unauthorized production of documents shall not constitute a waiver of the right to claim in the Action or thereafter that said documents are "Confidential" or "Highly Confidential" or subject to any valid claim of privilege or protection, including but not limited to, the attorney-client privilege and the work product doctrine. The party whose vendor produced the unauthorized material shall make a request for the return or destruction of the **Discovery Material** in writing, accompanied by redacted substitute copies of each item of **Discovery Material** if appropriate. Those individuals who received the **Discovery Material** shall within three (3) business days of receipt of the substitute copies, destroy or return to the producing party all copies of such documents. No such items shall be copied, distributed or otherwise disseminated for review beyond those individuals who have already been given access to the **Discovery Material**.

22. Nothing in this Protective Order shall be construed to require the production of any information, document, or thing that a party contends is protected from disclosure by the attorney-client privilege, the work product doctrine or any other applicable privilege.

Return of Confidential Information

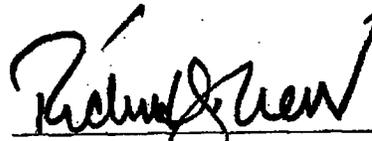
23. Upon final termination of this Action (whether by judgment, settlement, or otherwise), including all appeals and applications for discretionary review, the undersigned law firms, at their election, shall, within sixty (60) days following written request of the producing party, either (i) return all Designated Discovery Material and all copies, extracts, and summaries of such Designated Discovery Material to the party producing it, or (ii) destroy, subject to applicable law, such Designated Discovery Material, including all copies, extracts, and

summaries, and provide a letter certifying such destruction to the producing party. The parties shall request that all attachments or exhibits to pleadings designated under this Protective Order and filed under seal with the Court shall be returned within sixty (60) days to the party producing it, or the Court may destroy such material. For archival purposes, the attorneys in the law firms representing the parties may retain all material constituting attorney work product and one copy of all pleadings, deposition and hearing transcripts, exhibits, and written discovery responses, including portions designated pursuant to this Protective Order.

Termination of Action

24. The terms of this Protective Order shall survive the termination of the Actions, and the Court shall retain jurisdiction of the Actions after their final disposition for the purpose of enforcing this Protective Order.

Dated: 10/20, 2006



Judge Richard L. Leon
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

**In Re Federal National Mortgage
Association Securities, Derivative, and
"ERISA" Litigation**

MDL No. 1668

In Re Fannie Mae Securities Litigation

Consolidated Civil Action No. 1:04-cv-01639

Judge Richard J. Leon

In re: Fannie Mae Derivative Litigation

Consolidated Civil Action No. 1:04-cv-01783

Judge Richard J. Leon

In re Fannie Mae ERISA Litigation

Consolidated Civil Action No. 1:04-cv-01784

Judge Richard J. Leon

ACKNOWLEDGMENT

I certify that I have received and read a copy of the Stipulated Protective Order entered in the above-captioned actions and that I agree to be bound by the terms of the Stipulated Protective Order. I consent and agree to be subject to the jurisdiction and authority of the United States District Court, District of Columbia for purposes of enforcement of the Stipulated Protective Order.

Dated: _____

Signature

Printed Name



EXHIBIT 2

LAW OFFICES
WILLIAMS & CONNOLLY LLP

725 TWELFTH STREET, N.W.

WASHINGTON, D. C. 20005-5901

(202) 434-5000

FAX (202) 434-5029

EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

KEVIN M. DOWNEY
(202) 434-5460
kdowney@wc.com

July 18, 2006

BY HAND DELIVERY AND CERTIFIED MAIL

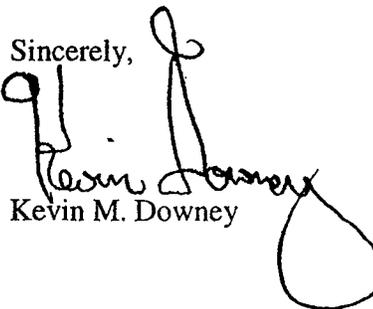
James B. Lockhart III, Director
Office of Federal Housing Enterprise Oversight
1700 G Street, N.W.
Washington, D.C. 20522

**Re: In Re Federal National Mortgage Association Securities, Derivative,
and ERISA Litigation, MDL No. 1668, Consolidated Civil Action No.
1:03-cv-01639; U.S. District Court for the District of Columbia**

Dear Mr. Lockhart:

Thank you for agreeing to accept the enclosed signed subpoena *duces tecum*. The enclosures were sent to you on July 17, 2006.

If you have any questions, please contact me at 202-434-5000. Thank you for your prompt attention to this matter.

Sincerely,

Kevin M. Downey

Enclosures

cc: All Lead Counsel of Record (w/o complaints)

Issued by the
United States District Court
DISTRICT OF COLUMBIA

In re Fannie Mae Securities Litigation

SUBPOENA IN A CIVIL CASE

V.

CASE NUMBER: 04-cv-1639 (RJL)

To: James B. Lockhart III
Office of Federal Housing Enterprise Oversight
1700 G Street, NW, Washington, DC 20552

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): SEE ATTACHMENT

PLACE Williams & Connolly, LLP, 725 12th St., N.W. Washington, DC 20005	DATE AND TIME August 8, 2006, 9:00 a.m.
----------------------------------------------------------------------------	--------------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Kevin M. Downey</i> Attorney for Def. Franklin D. Raines	DATE 7/18/06
------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER Kevin M. Downey, Williams & Connolly, LLP, 725 12th Street, N.W., Washington, DC 20005; (202) 434-5000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

_____ Date

_____ Signature of Server

_____ Address of Server

RULE 45, Federal Rules of Civil Procedure, Part C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that

person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or (vi) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an un-retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT

INSTRUCTIONS

1. As specified in Federal Rule of Civil Procedure 45(d), produce all documents within your possession, custody, and control as they are kept in the usual course of business or label and organize them to correspond with the appropriate request or requests.

2. This subpoena is continuing in character so as to require you to provide supplemental responses and produce additional documents.

3. If any document is withheld under a claim of privilege, separately identify each document for which such privilege is claimed and the particular request to which such document is responsive, together with the following information:

- (a) the date of, or appearing on, the document;
- (b) the document's author;
- (c) the identity of each recipient of a copy of the document;
- (d) a description of the contents of the document;
- (e) the privilege claimed;
- (f) the basis on which the privilege is claimed.

4. If you claim that any request is beyond the scope of permissible discovery, specify each and every ground on which such claim rests.

5. If you find any document request or term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear, state your understanding of the request or term, and respond in accordance with that understanding.

6. Draft or non-identical copies are to be considered separate documents for purposes of these requests,

7. "All" includes the term "each," or "any," and vice versa. The singular shall include the plural, and the disjunctive shall include the conjunctive, and vice versa.

DEFINITIONS

1. The term "Communication" is used in the comprehensive sense and means every conceivable manner or means of disclosure, transfer, or exchange of oral, electronic, digital or written information between or among one or more persons or entities, including, but not limited to, writings, correspondence, meetings, conferences, conversations, dialogues, discussions, interviews, consultations, agreements, inquiries, and any other expressions or understandings, whether made face-to-face, by telephone, mail, facsimile, computer or otherwise.

2. "Concerning" means, in whole or in part with respect to, in connection with, referring to, relating to, describing, evidencing, constituting, substantiating, purporting, embodying, establishing, identifying, listing, stating, comprising, connected with, memorializing, recording, commenting on or upon, responding to, showing, demonstrating, analyzing, reflecting, representing, supporting, explaining, consisting of, regarding, discussing, containing, setting forth, disclosing, explaining, summarizing, pertaining to, or otherwise having any logical or factual connection to the subject matter, of the document request.

3. "Document" is synonymous with the usage of that term in Rule 34 of the Federal Rules of Civil Procedure, and includes every conceivable form of communication, whether comprised of letters, words, numbers, pictures, sounds, or Symbols, or any combination thereof, that is recorded in tangible form or is capable of being produced intangible form, including, but not limited to, all writings and recordings, all visual or aural representations of any kind (including photographs, films, slides, microfiche, microfilm, videotape, audiotape, motion pictures, charts, drawings and surveys), all electronic, mechanical, magnetic, optical or electric data, records or representations of any kind (including computer data, computer files, computer programs,

hard drives, floppy disks, compact disks, tapes and cards existing on desktop computers, laptop computers, notebook computers, personal digital assistant computers, servers, backup tapes or any other medium), and any other form of physical media,

4. "Fannie Mae" means the Federal National Mortgage Association and all current and/or former Fannie Mae employees, officers, directors, accountants, and/or other agents or representatives of, or advisors or consultants to, Fannie Mae and/or its Board of Directors,

5. "OFHEO" means the Office of Federal Housing Enterprise Oversight and any of its divisions or departments., or any of its current or former officials, employees, accountants, examiners, agents, attorneys, or any other person or entity acting for, at the direction of, or on behalf of OFHEO.

DOCUMENTS TO BE PRODUCED

Special Examination Materials

1. Transcripts of all "formal" interviews conducted by OFHEO during its special examination (said by OFHEO to be 55 interviews).
2. Transcripts of all "formal" interviews conducted by the SEC and reviewed by OFHEO during the course of its Special Examination (said by OFHEO to be 47 interviews).
3. Notes or memoranda discussing, summarizing or recording "informal interviews" conducted by OFHEO during the Special Examination (said by OFHEO to be 26 interviews of Fannie Mae-related individuals and 7 interviews of KPMG individuals).
4. All documents cited or referenced in OFHEO's September 17, 2004 and May 23, 2006 reports concerning Fannie Mae.

Annual Examination Materials

5. All reports made by OFHEO to Congress concerning Fannie Mae between 1998 and 2004.
6. All reports made by OFHEO to the Fannie Mae Board of Directors between 1998 and 2004.
7. All examination workpapers prepared or created by OFHEO personnel or agents of OFHEO in connection with annual examinations of Fannie Mae from 1998 to 2004.
8. All documents related to OFHEO's examination, analysis, or review of compensation or compensation practices at Fannie between 1998 and 2004, including, but not limited to, all documents related to the review of compensation practices at Fannie Mae undertaken on OFHEO's behalf by Buck consultants.
9. All documents concerning OFHEO's review, analysis or evaluation of Fannie Mae's accounting practices and/or policies between 1998 and 2004.
10. All documents concerning OFHEO's review, analysis of the framework for internal controls and the management of that framework at Fannie Mae and the adequacy and effectiveness of such controls between 1998 and 2004.
11. All documents concerning OFHEO's review, analysis, evaluation and/or assessment of the overall adequacy and effectiveness of thhe the internal and external audit functions and the management of the audit program at Fannie Mae between 1998 and 2004.
12. All documents concerning OFHEO's evaluation of the quality of board governance and its evaluation of whether the Board effectively discharged its duties at Fannie Mae between 1998 and 2004.

13. All documents concerning OFHEO's evaluation of whether management at Fannie Mae effectively conveyed an appropriate message of integrity and ethical values between 1998 and 2004.

14. All documents reflecting communications between OFHEO and Franklin D. Raines.

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF DISTRICT OF COLUMBIA

In Re Federal National Mortgage
Association Securities, Derivative and
"ERISA" Litigation

MDL NO. 1668

In Re Fannie Mae Securities Litigation

Consolidated Civil Action No. 1:04-cv-01639

Judge Richard J. Leon

NOTICE OF SERVICE OF THIRD-PARTY SUBPOENA

PLEASE TAKE NOTICE that pursuant to Rule 45 of the Federal Rules of Civil Procedure, Franklin D. Raines, by his attorneys, has caused the attached subpoenas and attachment to be served upon the Securities and Exchange Commission and the Office of Federal Housing Enterprise Oversight.

Dated: July 24, 2006

Respectfully submitted,



Kevin M. Downey (D.C. Bar No. 438547)
WILLIAMS & CONNOLLY, LLP
725 Twelfth Street, N.W.
Washington, DC 20005
202-434-5000 (phone)
202-434-5029 (facsimile)

Counsel for Defendant Franklin D. Raines

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2006, I caused the foregoing Notice of Service of Third-

Party Subpoena to be served by first class mail on:

Jeffrey W. Kilduff, Esquire
O'MELVENY & MEYERS, LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

Melanie S. Corwin, Esquire
**WAITE, SCHNEIDER, BAYLESS &
CHESLEY CO., L.P.A.**
1513 Fourth & Vine Tower
One West Fourth Street
Cincinnati, Ohio 45202

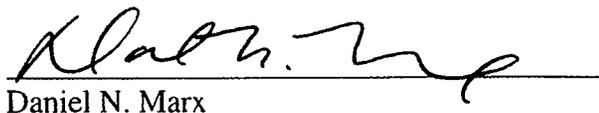
Seth Aronson, Esquire
O'MELVENY & MEYERS, LLP
400 South Hope Street, 15th Floor
Los Angeles, CA 90071-2899

Jeffrey C. Block, Esquire
**BERMAN DEVALERIO PEASE
TABACCO BURT & PUCILLO**
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Steven M. Salky, Esquire
Eric R. Delinsky, Esquire
Ellen D. Marcus, Esquire
ZUCKERMAN SPAEDER LLP
1800 M Steet, N.W., Suite 1000
Washington, DC 20036-5802

Steven J. Toll, Esquire
Daniel S. Sommers, Esquire
Matthew K. Handley, Esquire
**COHEN, MILSTEIN, HAUSFELD
& TOLL, PLLC**
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005-3964

David S. Krakoff, Esquire
Mark W. Ryan, Esquire
MAYER, BROWN, ROWE & MAW LLP
1909 K Street, N.W.
Washington, D.C. 20006-1101


Daniel N. Marx

STEVEN M. UMIN
JOHN W. VARDAMAN
PAUL MARTIN WOLFF
J. ALAN GALBRAITH
JOHN G. KESTER
WILLIAM E. MCDANIELS
BRENDAN V. SULLIVAN, JR.
RICHARD M. COOPER
GERALD A. FEFFER
JERRY L. SHULMAN
ROBERT B. BARNETT
DAVID E. KENDALL
GREGORY B. CRAIG
JOHN J. BUCKLEY, JR.
TERRENCE O'DONNELL
DOUGLAS R. MARVIN
JOHN K. VILLA
BARRY S. SIMON
KEVIN T. BAINE
STEPHEN L. URBANCZYK
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July 24, 2006

BY HAND DELIVERY

James B. Lockhart III
Director
Office of Federal Housing Enterprise Oversight
1700 G Street, N.W.
Washington, D.C. 20522

Re: In Re Federal National Mortgage Association Securities, Derivative, and ERISA Litigation, MDL No. 1668, Consolidated Civil Action No. 1:04-cv-01639; U.S. District Court for the District of Columbia

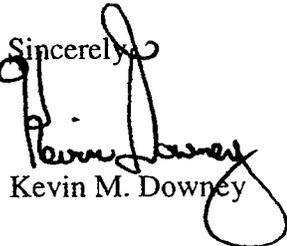
Dear Mr. Lockhart:

We represent Franklin D. Raines, a defendant in the referenced litigation, which is pending in the United States District Court for the District of Columbia. Thank you for agreeing to accept service of the enclosed subpoena *duces tecum*.

As explained in our July 17, 2006 letter, the materials requested in the subpoena are clearly relevant to Mr. Raines's defense. We agree, of course, to pay any reasonable fees pursuant to 12 C.F.R. § 1703.38 to obtain copies of the requested documents. The protective order in this case, which we previously provided, will preserve the confidentiality of the documents produced.

Thank you for your prompt consideration of this subpoena.

Sincerely,


Kevin M. Downey

Enclosures

cc: All Lead Counsel of Record

Issued by the
United States District Court
DISTRICT OF COLUMBIA

In re Fannie Mae Securities Litigation

SUBPOENA IN A CIVIL CASE

V.

CASE NUMBER: 1 04-cv-1639 (RJL)

Mr. James B. Lockhart, III

To: Office of Federal Housing Enterprise Oversight
1700 G Street, NW, Washington, DC 20552

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): SEE ATTACHMENT

PLACE Williams & Connolly, LLP 725 12th Street, NW, Washington, DC 20005	DATE AND TIME Aug. 14, 2006; 9 am
-----------------------------------------------------------------------------	--------------------------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Kevin M. Downey</i> Attorney for Defendant Franklin D. Raines	DATE July 24, 2006
--------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER
Kevin M. Downey, Williams & Connolly, LLP, 725 12th Street, NW, Washington, DC 20005; (202) 434-5000

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

1 If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

	DATE	PLACE
SERVED		
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
Date Signature of Server

Address of Server

RULE 45, Federal Rules of Civil Procedure, Part C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that

person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(vi) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an un-retained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT

INSTRUCTIONS

1. As specified in Federal Rule of Civil Procedure 45(d), produce all documents within your possession, custody, and control as they are kept in the usual course of business or label and organize them to correspond with the appropriate request or requests.

2. This subpoena is continuing in character so as to require you to provide supplemental responses and produce additional documents.

3. If any document is withheld under a claim of privilege, separately identify each document for which such privilege is claimed and the particular request to which such document is responsive, together with the following information:

- (a) the date of, or appearing on, the document;
- (b) the document's author;
- (c) the identity of each recipient of a copy of the document;
- (d) a description of the contents of the document;
- (e) the privilege claimed;
- (f) the basis on which the privilege is claimed.

4. If you claim that any request is beyond the scope of permissible discovery, specify each and every ground on which such claim rests.

5. If you find any document request or term used in a request to be vague, ambiguous, subject to varying interpretations, or unclear, state what portion of the request or term you find to be vague, ambiguous, subject to varying interpretations, or unclear, state your understanding of the request or term, and respond in accordance with that understanding.

6. Draft or non-identical copies are to be considered separate documents for purposes of these requests.

7. "All" includes the term "each" or "any," and vice versa. The singular shall include the plural, and the disjunctive shall include the conjunctive, and vice versa.

DEFINITIONS

1. The term "communication" is used in the comprehensive sense and means every conceivable manner or means of disclosure, transfer, or exchange of oral, electronic, digital or written information between or among one or more persons or entities, including but not limited to writings, correspondence, meetings, conferences, conversations, dialogues, discussions, interviews, consultations, agreements, inquiries, and any other expressions or understandings, whether made face-to-face, by telephone, mail, facsimile, computer or otherwise.

2. "Concerning" means, in whole or in part with respect to, in connection with, referring to, relating to, describing, evidencing, constituting, substantiating, purporting, embodying, establishing, identifying, listing, stating, comprising, connected with, memorializing, recording, commenting on or upon, responding to, showing, demonstrating, analyzing, reflecting, representing, supporting, explaining, consisting of, regarding, discussing, containing, setting forth, disclosing, explaining, summarizing, pertaining to, or otherwise having any logical or factual connection to the subject matter, of the document request.

3. "Document" is synonymous with the usage of that term in Rule 34 of the Federal Rules of Civil Procedure, and includes every conceivable form of communication, whether comprised of letters, words, numbers, pictures, sounds, or symbols, or any combination thereof, that is recorded in tangible form or is capable of being produced in tangible form, including but not limited to all writings and recordings, all visual or aural representations of any kind (including photographs, films, slides, microfiche, microfilm, videotape, audiotape, motion pictures, charts, drawings and surveys), all electronic, mechanical, magnetic, optical or electric data, records or representations of any kind (including computer data, computer files, computer programs, hard drives, floppy disks, compact disks, tapes and cards existing on desktop computers, laptop computers, notebook computers, personal digital assistant computers, servers, backup tapes or any other medium), and any other form of physical media.

4. "Fannie Mae" means the Federal National Mortgage Association and all current or former Fannie Mae employees, officers, directors, accountants, and/or other agents or

representatives of, or advisors or consultants to, Fannie Mae and/or its Board of Directors.

5. "OFHEO" means the Office of Federal Housing Enterprise Oversight and any of its divisions or departments, or any of its current or former officials, employees, accountants, examiners, agents, attorneys, or any other person or entity acting for, at the direction of, or on behalf of OFHEO.

6. "SEC" means the Securities and Exchange Commission and any of its divisions or departments, or any of its current or former officials, employees, accountants, examiners, agents, attorneys, or any other person or entity acting for, at the direction of, or on behalf of the SEC.

7. "Agency" means any federal agency as that term is defined by 5 U.S.C. § 552(f)(1), any of its divisions or departments, or any of its current or former officials, employees, agents, attorneys, or any other person or entity acting for, at the direction of, or on behalf of any federal agency, and also includes, without limitation, the Executive Office of the President, any of its divisions or departments, or any of its current or former officials, employees, agents, attorneys, or any other person or entity acting for, at the direction of, or on behalf of the Executive Office of the President.

DOCUMENTS TO BE PRODUCED

1. All documents concerning communications between OFHEO and any other Agency regarding OFHEO's special examination of Fannie Mae, including but not limited to communications regarding whether OFHEO should conduct a special examination of Fannie Mae and/or the status, examination procedures, findings and/or conclusions of OFHEO's special examination of Fannie Mae.
2. All documents that identify individuals who participated in communications between OFHEO and any other Agency regarding OFHEO's special examination of Fannie Mae, including but not limited to communications regarding whether OFHEO should conduct a special examination of Fannie Mae and/or the status, findings and/or conclusions of OFHEO's special examination of Fannie Mae.
3. All documents that identify the dates and locations of meetings at which occurred communications between OFHEO and any other Agency regarding OFHEO's special examination of Fannie Mae, including but not limited to communications regarding whether OFHEO should conduct a special examination of Fannie Mae and/or the status, findings and/or conclusions of OFHEO's special examination of Fannie Mae.
4. All materials that OFHEO provided to the SEC, from September 2004 through December 2004, for the purposes of the SEC's review of certain accounting issues raised by OFHEO's September 2004 report of findings to date of OFHEO's special examination of Fannie Mae.
5. All communications between OFHEO and Bethany McLean, of Fortune magazine, concerning Fannie Mae and/or Franklin D. Raines.

6. All documents that identify individuals who participated in communications between OFHEO and Bethany McLean concerning Fannie Mae and/or Franklin D. Raines.

7. All documents that identify the dates and locations of meetings at which occurred communications between OFHEO and Bethany McLean concerning Fannie Mae and/or Franklin D. Raines.

8. All documents concerning Fannie Mae and/or Franklin D. Raines that refer to "Noriega" or "Operation Noriega."