

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

**Notice Number 2006-1**

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**In The Matter Of:** )

**FRANKLIN D. RAINES** )

**J. TIMOTHY HOWARD** )

**LEANNE G. SPENCER** )

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**OFHEO’S MOTION TO STRIKE OR LIMIT DISCOVERY REQUESTS FROM  
RESPONDENT J. TIMOTHY HOWARD**

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 ’s J. Timothy Howard’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 Howard herein as part of duplicative discovery sought by Mr. Howard in *In re Fannie Mae Securities Litigation*, Civ. No. 1:04-cv-01639 (D.D.C.) (“MDL”). OFHEO moves to strike or limit Respondent Howard’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. Howard. The NOC alleges that Mr. Howard engaged in conduct that violated the Federal Housing Enterprise Financial Safety and Soundness Act of 1992. Consequently, OFHEO filed the NOC against Mr. Howard 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. Howard's 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,<sup>1</sup> the investigative files privilege,<sup>2</sup> the deliberative process privilege,<sup>3</sup> 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

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<sup>1</sup> *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.").

<sup>2</sup> *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").

<sup>3</sup> *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,<sup>4</sup> 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

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<sup>4</sup> 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).<sup>5</sup> 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,<sup>6</sup> concerns over burden are heightened where the requests are not narrowly “tailor[ed] to the purpose for which the information is

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

<sup>6</sup> 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. Howard, 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. Howard, 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. Howard in the conduct of OFHEO’s safety and soundness examinations, Mr. Howard 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. Howard 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. Howard’s 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. Howard’s definition of “document” to the extent it exceeds the definition required by law.

OFHEO objects to, and moves to strike or limit, Mr. Howard’s 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 OFHEO intends to use at the hearing described in the first paragraph of the Notice of Charges.

### **RESPONSE:**

They will be provided.

2. All documents tending to disprove any of the allegations in the Notice of Charges and/or documents that could be used to impeach the testimony of any witness to be called by OFHEO.

### **RESPONSE:**

OFHEO will provide all documents that could be used to impeach any witness to be called by OFHEO. OFHEO does not possess any documents that tend to disprove any of the allegations in the Notice of Charges.

3. All documents concerning Frank Raines, Tim Howard, and Leanne Spencer's responsibilities 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:**

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 will provide all documents responsive to this request.

4. 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 responsive documents have been or will be provided by OFHEO in the MDL, OFHEO will provide all non-privileged documents responsive to this request

5. All documents concerning OFHEO's review of 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 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.

6. All documents concerning accounting for nonrefundable fees and costs associated with lending activities.

**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. As stated, this request is overbroad and unduly burdensome. Furthermore, this request is not limited to the period covered by the Notice of Charges.

7. All documents concerning Fannie Mae's policies and practices for accounting for nonrefundable fees and costs associated with lending activities.

**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. As stated, this request is overbroad and unduly burdensome. Furthermore, this request is not limited to the period covered by the Notice of Charges.

8. All documents concerning the allegations of paragraph 25 of the Notice of Charges, including, but not limited to:

- a. the deferral of approximately \$200 million of estimated amortization expense,
- b. the combination of interest only securities with mortgage backed securities to create "synthetic" REMICs,
- c. the accounting for guarantee fee buy ups,
- d. the accounting for Low Income Housing Tax Credits,
- e. the STIS transaction and the IRS ruling regarding the STIS transaction, and
- f. the transfer of \$3.9 million from account no. 1622-00.

**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 will provide all documents responsive to this request.

9. All documents concerning KPMG's knowledge of the matters described above in Request No.7.

**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 will provide all documents responsive to this request.

10. All documents concerning the allegation that "Howard and his staff deliberately avoided discussion of buy-up accounting with KPMG" in paragraph 25(c).

**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 will provide all documents responsive to this request.

11. All documents concerning the interest rate path used by Fannie Mae for the forecast for the third quarter of 1998.

**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 concerning the amortization of nonrefundable fees and costs associated with REMICs and synthetic REMICS in 1998 by 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.

13. All documents concerning the calculation and projections of Purchase Discount Amortization (PDA) at Fannie Mae in 1998.

**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. All documents concerning the amount of loans held by Fannie Mae in portfolio from January 1, 1998 through January 1, 2005.

**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.

15. All documents concerning the accounting infrastructure at Fannie Mae from January 1, 1998 through January 1, 2005.

**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.

16. All documents concerning the financial reporting infrastructure at Fannie Mae from January 1, 1998 through January 1, 2005.

**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 and seeks privileged material.

17. All documents concerning the drafting of Fannie Mae's annual reports for 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005.

**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 and seeks privileged material.

18. All documents concerning Fannie Mae stock repurchases.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

19. All documents concerning Fannie Mae's policies and practices of capitalizing, amortizing, and/or recording reconciliation differences.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

20. All documents concerning a \$20 billion REMIC transaction at Fannie Mae in December 2001.

**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 and seeks privileged material.

21. All documents concerning a \$10 billion REMIC transaction at Fannie Mae in March 2002.

**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 and seeks privileged material.

22. All documents concerning internal control systems at Fannie Mae to account for REMIC transactions from January 1, 1998 through January 1, 2005.

**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 and seeks privileged material.

23. All documents concerning financial disclosure controls at Fannie Mae from January 1, 1998 through January 1, 2005.

**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 and seeks privileged material.

24. All documents concerning Raines, Howard or Spencer's knowledge of Fannie Mae's hedge accounting policies and practices with regard to its derivative portfolio from January 1, 1999 through January 1, 2005.

**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 will provide all non-privileged documents responsive to this request.

25. All documents concerning KPMG's knowledge of Fannie Mae's hedge accounting policies and practices with regard to its derivative portfolio from January 1, 1999 through January 1, 2005.

**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 will provide all non-privileged documents responsive to this request.

26. All documents concerning Fannie Mae debt buybacks.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

27. All documents concerning Fannie Mae's policies and practices regarding debt buybacks.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

28. All documents concerning Fannie Mae's allowance for loan losses.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

29. All documents concerning Fannie Mae's policies and practices regarding allowance for loan losses.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

30. All documents concerning Fannie Mae's accounting for Low Income Housing Tax Credits.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

31. All documents concerning Fannie Mae's purchase of finite insurance policies.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

32. All documents concerning the allegation that Raines or Howard knew or should have known that information contained in minimum capital reports from 1999 through 2004 was inaccurate or misleading.

**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 will provide all non-privileged documents responsive to this request.

33. All documents concerning OFHEO's determinations of the capital classification for Fannie Mae each quarter from 1999 through 2004.

**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 will produce responsive, non-privileged capital classifications for Fannie Mae each quarter from 1999 through 2004. OFHEO otherwise will not produce documents concerning the capital classifications for these periods as those requests are unduly burdensome, seek privileged information and are not reasonably calculated to seek materially relevant information pertaining to the pending administrative action.

34. All documents concerning the allegation that Raines, Howard, and Spencer "were aware that the Enterprise's accounting in regard to FAS 91, FAS 133, and other accounting standards was not GAAP compliant."

**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 will produce non-privileged, responsive documents regarding the allegation that Raines, Howard and Spencer were aware that the enterprises accounting with regard to FAS 91 and FAS 133 and other accounting standards "were not GAAP compliant." To the extent that Howard's request seeks all documents concerning this allegation, OFHEO objects to and moves to strike or limit the request as it is unduly broad and burdensome, seeks privileged information, and are not reasonably calculated to seek materially relevant information pertaining to the pending administrative action.

35. All documents concerning OFHEO's annual examination of the safety and soundness of Fannie Mae's internal controls and/or any aspect of Fannie Mae's internal control systems from January 1, 1998 through January 1, 2005.

**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 and seeks privileged material.

36. All documents concerning KPMG's audit and/or evaluation of Fannie Mae's internal controls and/or any aspect of the internal control systems at Fannie Mae from January 1, 1998 through January 1, 2005.

**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 will produce non-privileged documents responsive to this request. To the extent that the request seeks all documents concerning KPMG's audits or evaluations, OFHEO moves to strike or limit this request to the extent that this request is unduly burdensome, seeks privileged information and is not reasonably calculated to seek materially relevant information in the pending administrative action.

37. All documents concerning any evaluation of Fannie Mae's internal controls and/or any aspect of the internal control system at Fannie Mae from January 1, 1998 through January 1, 2005.

**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 and seeks privileged material.

38. All documents concerning Fannie Mae's process for developing accounting policies.

**RESPONSE:**

OFHEO disagrees with the assertion in this request that Fannie Mae had a process for developing accounting policies. Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or are privileged, OFHEO will provide all non-privileged documents responsive to this request. Furthermore, this request is not limited to the period covered by the Notice of Charges.

39. All documents concerning (a) the skills of Fannie Mae's accounting policy staff, including but not limited to Jonathan Boyles and (b) the staffing levels of Fannie Mae's accounting policy staff.

**RESPONSE:**

Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or are privileged, OFHEO will provide all non-privileged documents responsive to this request. Furthermore, this request is not limited to the period covered by the Notice of Charges.

40. All documents between January 1, 1998 and January 1, 2005 concerning (a) staffing needs in the Controller's Office and (b) the experience and expertise of the staff in the Controller's Office.

**RESPONSE:**

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

41. All documents concerning the skills and job performance of Janet Pennewell, Jeffrey Juliane, Mary Lewers, Sampath Rajappa, and Tom Lawler at Fannie Mae.

**RESPONSE:**

Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or are privileged, OFHEO will provide all non-privileged documents responsive to this request. Furthermore, this request is not limited to the period covered by the Notice of Charges.

42. All documents concerning the skills, job performance, duties and responsibilities of Daniel Mudd during the period of time he was COO of Fannie Mae.

**RESPONSE:**

Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or are privileged, OFHEO will provide all non-privileged documents responsive to this request. Furthermore, this request is not limited to the period covered by the Notice of Charges.

43. All documents concerning the implementation of FAS 149 at Fannie Mae.

**RESPONSE:**

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

44. All documents concerning advice from KPMG to Fannie Mae regarding any accounting policy or practice at Fannie Mae from January 1, 1998 through January 1, 2005.

**RESPONSE:**

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

45. All documents concerning communications from Internal Audit to Frank Raines, Timothy Howard, and Leanne Spencer or from Frank Raines, Timothy Howard or Leanne Spencer to Internal Audit from January 1, 1998 through January 1, 2005.

**RESPONSE:**

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

46. All documents concerning communications from Internal Audit to the Board of Directors of Fannie Mae or from the Board of Directors to Internal Audit from January 1, 1998 through January 1, 2005.

**RESPONSE:**

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

47. All documents concerning communications from Internal Audit to KPMG or from KPMG to Internal Audit.

**RESPONSE:**

Except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or are privileged, OFHEO will provide all non-privileged documents responsive to this request. Furthermore, this request is not limited to the period covered by the Notice of Charges.

48. All documents concerning any OFHEO review, evaluation, or examination of Internal Audit at Fannie Mae, including but not limited to all communications from Fannie Mae to OFHEO concerning Internal Audit or from OFHEO to Fannie Mae concerning Internal Audit.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

49. All documents concerning the internal audit function.

**RESPONSE:**

This request is vague, unduly burdensome and overbroad. 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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

50. All documents concerning audit reports created by Internal Audit from January 1, 1998 through January 1, 2005.

**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 will provide responsive, non-privileged audit reports created by Internal Audit from January 1, 1998 through January 1, 2005. OFHEO objects to and moves to strike or limit this request as the request seeks documents “concerning” audit reports during that time period. This request is overbroad and unduly burdensome, seeks privileged information and not reasonably calculated to seek materially relevant information within the administrative enforcement action.

51. All documents concerning Roger Barnes.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

52. All documents concerning Michelle Skinner.

**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 and seeks privileged material. Furthermore, this request is not limited to the period covered by the Notice of Charges.

53. All documents concerning the Security Master project.

**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 and seeks privileged information. Furthermore, this request is not limited to the period covered by the Notice of Charges.

54. All documents concerning communications from Wilmer to OFHEO concerning Fannie Mae, or from OFHEO to Wilmer concerning Fannie Mae, from January 1, 2003 through January 1, 2005.

**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 and seeks privileged information.

55. All documents concerning communications from Ernst & Young to OFHEO concerning Fannie Mae, or from OFHEO to Ernst & Young concerning Fannie Mae, from January 1, 2003 through January 1, 2005.

**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 and seeks privileged material.

56. All notes or memoranda of any interview of any Fannie Mae employee or former employee conducted by the Securities and Exchange Commission from January 1, 2003 through the present.

**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.

57. All notes or memoranda of any interview of any Fannie Mae employee or former employee conducted by the Public Company Accounting Oversight Board from January 1, 2003 through the present.

**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.

58. All notes or memoranda of any interview of any Fannie Mae employee or former employee conducted by Paul, Weiss, Rifkind, Wharton & Garrison LLP from January 1, 2003 through the present.

**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 it seeks privileged information.

59. All documents concerning communications from OFHEO to any member of the United States Congress regarding 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 and seeks privileged information. Furthermore, this request is not limited to the period covered by the Notice of Charges.

60. All documents requested by Franklin D. Raines's First Set of Document Requests to the Office of Federal Housing Enterprise Oversight.

**RESPONSE:**

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

61. All documents requested by Leanne G. Spencer's First Request for Production of Documents to the Office of Federal Housing Enterprise Oversight.

**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.

Respectfully submitted,

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/s/  
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