

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

Notice Number 2006-1

In The Matter Of:)
)
FRANKLIN D. RAINES)
)
J. TIMOTHY HOWARD)
)
LEANNE G. SPENCER)

**OFHEO’S MOTION TO STRIKE OR LIMIT DISCOVERY REQUESTS FROM
RESPONDENT LEANNE G. SPENCER**

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 Leanne G. Spencer’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 Spencer herein as part of duplicative discovery sought by Ms. Spencer 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 Ms. Spencer. The NOC alleges that Ms. Spencer engaged in conduct that violated the Federal Housing Enterprise Financial Safety and Soundness Act of 1992. Consequently, OFHEO filed the NOC against Ms. Spencer 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 Ms. Spencer'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,¹ the investigative files privilege,² the deliberative process privilege,³ the attorney-client privilege, and the work-product doctrine. Such materials are "not discoverable" in this proceeding. *See* 12 C.F.R. § 1780.26(d) (identifying specifically materials subject to the "attorney-client privilege, work-product privilege, any government's or government agency's deliberative process privilege and any other privileges provided by the Constitution, any applicable act of Congress, or the principles of common law" as "not discoverable"). Specifically, production of OFHEO examination workpapers, other examination documents, documents containing confidential and trade secrets, communications with counsel, documents prepared by and at the direction of counsel, communications with other federal law enforcement agencies, and notes, memoranda, and other materials prepared in connection with

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

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

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

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

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

A. The Bank Examination Privilege

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

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

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

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

...

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

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

B. Deliberative Process Privilege

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

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

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

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

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

C. Investigative Files Privilege

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

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

D. Attorney-Client Privilege and Work-Product Doctrine

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

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

II. Requests That are Excessive in Scope and Unduly Burdensome

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

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

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

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

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

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

Finally, and with respect to documents pertaining to OFHEO’s examinations of Fannie Mae, it should be remembered that OFHEO owes no duty to Enterprise officers and directors, including Ms. Spencer, 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 Ms. Spencer, 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 Ms. Spencer in the conduct of OFHEO’s safety and soundness examinations, Ms. Spencer 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, Ms. Spencer 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, Ms. Spencer’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, Ms. Spencer’s definition of “document” to the extent it exceeds the definition required by law.

OFHEO objects to, and moves to strike or limit, Ms. Spencer’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 reflecting any communications between you and any individual you intend to call as a witness at the hearing described in paragraph 1 of the Notice of Charges.

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.

2. All documents reflecting any offer of settlement provided to or received from any individual you intend to call as a witness in the hearing described in paragraph 1 of the Notice of Charges.

RESPONSE:

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

3. All documents and demonstrative exhibits that you intend to introduce into evidence at the hearing described in paragraph 1 of the Notice of Charges.

RESPONSE:

Those documents will be provided.

4. All communications between you and any individual you intend to call as an expert witness at the hearing described in paragraph 1 of the Notice of Charges.

RESPONSE:

Responsive, non-privileged documents will be provided to the extent such an exchange is required in accordance with 12 C.F.R. § 1780.34.

5. All documents relied on by any expert witness in reaching any opinion to be offered at the hearing described in paragraph 1 of the Notice of Charges.

RESPONSE:

Responsive documents will be provided.

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

RESPONSE:

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

7. All documents produced by any party other than Fannie Mae to OFHEO in connection with OFHEO's Special Examination of Fannie Mae.

RESPONSE:

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

8. All memoranda and notes concerning any interview conducted by OFHEO in connection with OFHEO's Special Examination of Fannie Mae.

RESPONSE:

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

9. All communications between you and any individual you interviewed in connection with OFHEO's Special Examination of Fannie Mae.

RESPONSE:

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

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

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL, OFHEO objects to and moves to strike or limit

this request as the request is not reasonably calculated to seek any materially relevant information pertaining to the pending administrative action.

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

RESPONSE:

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

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

RESPONSE:

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.

13. 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 produce non-privileged documents responsive to this request.

14. All communications between you and Fannie Mae relating to potential legal claims by you or Fannie Mae against Ms. Spencer, Mr. Howard, Mr. Raines, or KPMG.

RESPONSE:

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

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

RESPONSE:

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

16. 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.

17. 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.

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

RESPONSE:

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

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

RESPONSE:

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

20. All documents concerning OFHEO's retention of Duane Morris LLP.

RESPONSE:

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

21. All documents concerning communications between OFHEO and any other U.S. government agency concerning the Special Examination of Fannie Mae.

RESPONSE:

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

22. All documents concerning OFHEO's Annual Examinations of Fannie Mae for the years 1998-2004.

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 agrees to produce responsive, non-privileged annual examinations of Fannie Mae for years 1998 through 2004. To the extent that this request seeks documents beyond that, OFHEO objects to this request as it is not reasonably calculated to seek materially relevant information pertaining to the pending administrative action and seeks privileged information.

23. All communications between you and Fannie Mae in connection with OFHEO's Annual Examinations of Fannie Mae for the years 1998-2004.

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 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.

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

RESPONSE:

Transcripts of testimony taken by OFHEO have already been provided in the MDL action. Any transcript taken by the SEC or Public Company Accounting Oversight Board will not be provided as such documents are privileged.

25. All documents concerning KPMG's audit of the internal controls and/or any aspect of Fannie Mae's 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 information.

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

RESPONSE:

OFHEO disagrees with the assertion in this request that Fannie Mae had one process for developing accounting policies. Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL or the documents are privileged, OFHEO will provide non-privileged documents responsive to this request.

27. All documents concerning Fannie Mae's FAS 91 policy, including but not limited to the development, approval, and application of that policy.

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.

28. 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:

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 non-privileged documents responsive to this request.

29. All documents between January 1, 1998 and January 1, 2005 concerning Fannie Mae's Office of the Controller ("Controller's Office), including but not limited to (a) staffing needs in the Controller's Office and (b) the experience and expertise of the staff in the Controller's Office.

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. or are otherwise privileged, OFHEO will provide non-privileged documents responsive to this request.

30. All documents concerning the skills and job performance of Janet Pennewell, Jeffrey Juliane, Mary Lewers, Sampath Rajappa, Tom Lawler, and Daniel Mudd, during the period of time he was COO of Fannie Mae.

RESPONSE:

Subject to the general objections and except to the extent that responsive documents have been or will be provided by OFHEO in the MDL. or are otherwise privileged, OFHEO will provide non-privileged documents responsive to this request.

31. All documents concerning advice from KPMG regarding any accounting policy or practice 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 or are otherwise privileged, OFHEO will provide non-privileged documents responsive to this request.

32. All documents that support or refute the allegation in paragraph 9 of the Notice of Charges that Fannie Mae's December 5, 2006 restatement "was due in large part to the misconduct of Ms. Spencer."

RESPONSE:

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

33. All documents that support or refute the allegation in paragraph 10 of the Notice of Charges that the misconduct of Ms. Spencer "led, in large part, to the \$400 million civil monetary penalty paid by the Enterprise and the need for the costly measures to remedy the consequences of their conduct."

RESPONSE:

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

34. All documents that support or refute the allegation in paragraph 11 of the Notice of Charges that the misconduct of Ms. Spencer "led, in large part, to the in excess of \$1 billion spent by the Enterprise to recreate and correct its historic financial statements."

RESPONSE:

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

35. All documents that support or refute the allegation in paragraph 25 of the Notice of Charges that Ms. Spencer "proposed the deferral" of approximately \$200 million of estimated amortization expense from 1998.

RESPONSE:

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

36. All documents that support or refute the allegation in paragraph 28 of the Notice of Charges that Mr. Howard and Ms. Spencer “agreed to make the goal of meeting a \$3.21 EPS target in 1998, and managing earnings to that target their top priorities.”

RESPONSE:

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

37. All documents that support or refute the allegation in paragraph 32 of the Notice of Charges that Ms. Spencer “transformed the forecast shortfall into the attainment of the maximum EPS/AIP bonus through improper earnings management and accounting manipulation.”

RESPONSE:

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

38. All documents concerning the January 8, 1999, “Earnings Alternatives Meeting” described in paragraph 34 of the Notice of Charges.

RESPONSE:

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

39. All documents concerning the meeting between Ms. Spencer and KPMG described in paragraph 34(a) of the Notice of Charges.

RESPONSE:

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

40. All documents concerning the meeting between Ms. Spencer and Mr. Howard described in paragraph 34(b) of the Notice of Charges.

RESPONSE:

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

41. All documents supporting or refuting the “summary of events in December 1998 and early January” described in paragraph 34 of the Notice of Charges.

RESPONSE:

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

42. All documents concerning the meeting between Ms. Spencer and Ms. Theobald, Mr. Russell, and Mr. Smith of KPMG described in paragraph 34(h) of the Notice of Charges.

RESPONSE:

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

43. All documents that support or refute the allegation in paragraph 36 of the Notice of Charges that Mr. Howard, “in consultation with” Ms. Spencer, “set the financial targets for the AD? bonus that included the target for maximum payouts as well as the minimum threshold that determined whether there would be payouts at all from the ABP bonus pool.”

RESPONSE:

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

44. All documents that support or refute the allegation in paragraph 42 of the Notice of Charges that Ms. Spencer “improperly used stock repurchases as a method of reaching AIP/EPS targets.”

RESPONSE:

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

45. All documents that support or refute the allegation in paragraph 43 of the Notice of Charges that Ms. Spencer “crafted a FAS 91 policy to reduce volatility, in contravention of Generally Accepted Accounting Principles (GAAP).”

RESPONSE:

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

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

RESPONSE:

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

47. All documents that support or refute the allegation in paragraph 45 of the Notice of Charges that Ms. Spencer “did not make the appropriate disclosures about the transactions in the associated prospectus supplements or financial statements and did not have the appropriate internal control systems to account properly for these REMIC transactions.”

RESPONSE:

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

48. All documents that support or refute the allegation in paragraph 46 of the Notice of Charges that Ms. Spencer was “responsible for the inappropriate manner in which the Enterprise accounted for the results of the Security Master Project.”

RESPONSE:

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

49. All documents that support or refute the allegation in paragraph 47 of the Notice of Charges that Ms. Spencer was “responsible for the inappropriate manner in which the Enterprise accounted for dollar roll transactions.”

RESPONSE:

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

50. All documents that support or refute the allegations in paragraph 48 of the Notice of Charges that Ms. Spencer was “responsible for the Enterprise’s implementation of a non-GAAP treatment of derivatives, which violated FAS 133 and reduced earnings volatility,” and “also developed the concept of the Core Business Earnings Per Share that did not include FAS 133 accounting.”

RESPONSE:

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

51. All documents that support or refute the allegations in paragraph 50 of the Notice of Charges that Ms. Spencer “actively participated in earnings management related to debt buybacks designed to fine tune financial results in order to meet EPS/AD? targets,” and “failed to document any economic or other justification for the debt buybacks.”

RESPONSE:

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

52. All documents that support or refute the allegation in paragraph 52 of the notice of charges that Ms. Spencer “inappropriately accounted for Low Income Housing Tax Credits for the purpose of creating a cushion for volatility in order to manage earnings to AIP/EPS targets.”

RESPONSE:

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

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

RESPONSE:

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

54. All documents that support or refute the allegations in paragraph 54 of the Notice of Charges that Ms. Spencer “obscured the accounting effect of decreasing interest rates on IOs by avoiding recording impairments on the IOs,” and “did the same thing for its net buy-up portfolio.”

RESPONSE:

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

55. All documents that support or refute the allegation in paragraph 55 of the Notice of Charges that Ms. Spencer “directed efforts to meet earnings targets for 2004.”

RESPONSE:

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

56. All documents that support or refute the allegations in paragraph 71 of the Notice of Charges that Ms. Spencer was “aware that the Enterprise’s accounting in regard to FAS 91, FAS 133 and other accounting standards was not GAAP compliant” and nevertheless “authorized financial disclosures that falsely asserted GAAP-compliance.”

RESPONSE:

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

57. All documents that support or refute the allegation in paragraph 74 of the Notice of Charges that Ms. Spencer “failed to ensure that written policies regarding the formulation of accounting policy were established.”

RESPONSE:

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

58. All documents that support or refute the allegations in paragraphs 16 and 101 that with respect to FAS 149, the Controller’s Office “did not have the detailed knowledge needed to quickly implement the necessary system changes” and “did not fully understand the settlement process.”

RESPONSE:

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

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

RESPONSE:

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

60. All documents that support or refute the allegation in paragraph 78 of the Notice of Charges that Ms. Spencer was “responsible for communicating accounting policy throughout the Enterprise.”

RESPONSE:

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

61. All documents that support or refute the allegation in paragraph 83 that Ms. Spencer “failed to provide adequate oversight of the Controller’s Office, which contributed to a

weak control environment, inadequate staffing, and poor implementation of accounting standards.”

RESPONSE:

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

62. All documents that support or refute the allegations in paragraph 83 of the Notice of Charges that Mr. Howard “was intimately involved in the structure and operations of the Controller’s Office,” and Mr. Raines “was also knowledgeable and responsible for the poor operation of the Controller’s Office.”

RESPONSE:

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

63. All documents that support or refute the allegation in paragraph 84 of the Notice of Charges that “[t]he centralization of duties in Spencer seriously undermined Fannie Mae’s internal control system and the integrity of the Enterprise’s financial reporting.”

RESPONSE:

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

64. All documents that support or refute the allegation in paragraph 84 of the Notice of Charges that Ms. Spencer “played a key role in the development of the Enterprise’s FAS 91 policy, effectively substituting for the Financial Standards group, which was responsible for developing accounting policies.”

RESPONSE:

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

65. All documents that support or refute the allegation in paragraphs 85 and 86 of the Notice of Charges that Ms. Spencer created “key person dependencies,” particularly in the person of Jonathan Boyles.

RESPONSE:

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

66. All documents that support or refute the allegation in paragraph 85 of the Notice of Charges that “[a]s a result of Spencer’s inaccurate assessment of staffing needs in the

Controller's Office and her inadequate oversight of that Office, Fannie Mae spent in excess of a billion dollars to restate its financial condition."

RESPONSE:

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

67. All documents that support or refute the allegations in paragraph 87 of the Notice of Charges that Ms. Spencer "centralized the business planning/income forecasting and financial reporting responsibilities under Janet Pennewell," and because of Ms. Spencer's actions, Ms. Pennewell "was able to manipulate the amounts of reported net income in order to achieve the planned results she forecast."

RESPONSE:

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

68. All documents that support or refute the allegation in paragraphs 88 and 89 of the Notice of Charges that Ms. Spencer created conflicts of interest "in personnel under Ms. Pennewell" and "between forecasting and the authority to create journal entries and financial reporting."

RESPONSE:

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

69. All documents that support or refute the allegation in paragraph 94 of the Notice of Charges that Ms. Spencer "had the responsibility and authority to approve accounting policy."

RESPONSE:

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

70. All documents that support or refute the allegations in paragraphs 94 and 96 of the Notice of Charges that Ms. Spencer was not competent "to render accounting policy" or "to perform the duties required of the Controller," and that it was "unsafe and unsound" for Ms. Spencer "to approve and promulgate accounting policy without being a CPA."

RESPONSE:

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

71. All documents that support or refute the allegation in paragraph 95 of the Notice of Charges that “the PDA Policy was created by Howard and Spencer.”

RESPONSE:

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

72. All documents that support or refute the allegation in paragraph 96 of the Notice of Charges that Ms. Spencer “executed the accounting policies created by Financial Standards.”

RESPONSE:

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

73. All documents that support or refute the allegations in paragraph 97 that the staff in the Controller’s Office “did not have the requisite experience and expertise to handle either complex or routine accounting issues in the mortgage industry (e.g. FAS 91) to ensure compliance with GAAP.”

RESPONSE:

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

74. All documents that support or refute the allegations in paragraphs 102 through 109 of the Notice of Charges regarding the staffing, resources, workload, and operations of the Controller’s Office and Ms. Spencer’s role and conduct therein.

RESPONSE:

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

75. All documents that support or refute the allegations in paragraphs 114,115, and 116 of the Notice of Charges that Ms. Spencer “knew or should have known about the audit results.”

RESPONSE:

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

76. All documents that support or refute the allegations in paragraph 122 of the Notice of Charges that Ms. Spencer's "drive to formulate accounting policy in 1999 and 2000 was fueled by management's surprise at the magnitude of the approximately \$440 million estimated expense at the end of 1998, by a determination to avoid audit differences, and by the insistence of KPMG that a policy be developed."

RESPONSE:

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

77. All documents that support or refute the allegations in paragraph 122 of the Notice of Charges that "[m]anagement was also driven to create policies that fostered a smooth, predictable growth pattern, which ... would increase management's chances to hit EPS/AIP targets," and "to keep cost for internal controls low so as to further its EPS/AIP objectives."

RESPONSE:

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

78. All documents that support or refute the allegations in paragraph 122 of the Notice of Charges that Ms. Spencer consequently "established high materiality thresholds, extended the life of the Enterprise's legacy accounting systems, and avoided the expense of developing new systems that could handle the increasingly complex accounting required by Fannie Mae's business."

RESPONSE:

79. All documents that support or refute the allegation in paragraph 133 of the Notice of Charges that Ms. Spencer was "aware of the errors involving accounting policy, practices and systems."

RESPONSE:

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

80. All documents that support or refute the allegation in paragraph 133 of the Notice of Charges that because Ms. Spencer "desired neither additional expenditures nor increased volatility, corrections were not made to accounting policy, practices and systems."

RESPONSE:

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

81. All documents that support or refute the allegation in paragraph 142 of the Notice of Charges that Ms. Spencer “failed to establish appropriate internal controls over the company’s amortization process.”

RESPONSE:

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

82. All documents that support or refute the allegation in paragraph 142 of the Notice of Charges that Ms. Spencer “reorganized functions within the Controller’s Division and removed segregation of duties that separated responsibility for estimating projected income and recording actual income,” which “directly affected” Ms. Spencer’s “ability to manage income to meet EPS targets.”

RESPONSE:

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

83. All documents that support or refute the allegation in paragraph 142 of the Notice of Charges that Ms. Spencer “established the AIMS” and “did not establish a consistent or GAAP-compliant process accounting for reconciliation differences or for correcting illogical and anomalous results from its AIMS system.”

RESPONSE:

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

84. All documents that support or refute the allegation in paragraph 145 of the Notice of Charges that Ms. Spencer used the “materiality threshold for the Security Master project results” for the purpose of “managing earnings.”

RESPONSE:

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

85. All documents that support or refute the allegation in paragraph 150 of the Notice of Charges that Ms. Spencer was “well aware of the systems’ shortcomings and used them to maneuver adjustments to financial statements without having to connect them to a paper trail.”

RESPONSE:

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

86. All documents that support or refute the allegations in paragraphs 151 and 155 of the Notice of Charges that Ms. Spencer “did not ensure that journal entries were independently reviewed, validated, authorized, and properly recorded” and “did not adequately communicate and ensure that journal preparers were responsible for determining that journal entries were correct.”

RESPONSE:

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

87. All documents that support or refute the allegation in paragraph 153 of the Notice of Charges that Ms. Spencer “use[d] Account 1622-00 as a ‘cookie jar’ to meet the EPS/AIP bonus for the 1998 fiscal year.”

RESPONSE:

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

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

RESPONSE:

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

89. All documents that support or refute the allegation in paragraph 157 that “[w]eak controls within the Controller’s Office allowed violations of the most fundamental principles for closing processes.”

RESPONSE:

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

90. All documents that support or refute the allegation in paragraph 158 of the Notice of Charges that Ms. Spencer “discussed the implications of the financial numbers in relation to EPS during the closing process.”

RESPONSE:

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

91. All documents that support or refute the allegations in paragraph 158 of the Notice of Charges that Ms. Spencer “spearheaded the effort to reopen Fannie Mae’s books to make an adjusting entry,” and “reported on her progress that day to Howard.”

RESPONSE:

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

92. All documents that support or refute the allegations in paragraph 160 that Ms. Spencer “manipulate[ed] Fannie Mae’s accounting for amortization expenses, Low Income Housing Tax Credits, and account number 1622-00 for the purpose of attaining financial targets linked to [her] own compensation.”

RESPONSE:

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

93. All documents that support or refute the allegation in paragraph 173 of the Notice of Charges that Ms. Spencer “manipulated] Fannie Mae’s insurance accounting for two Finite Insurance transactions.”

RESPONSE:

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

94. All documents that support or refute the allegation in paragraph 183 of the Notice of Charges that Ms. Spencer “enter[ed] into transactions that created REMICS which [she] used to shift income into future years.”

RESPONSE:

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

95. All documents that support or refute the allegations in the Notice of Charges that Ms. Spencer knowingly caused Fannie Mae to make “false and misleading disclosures regarding the Company’s GAAP compliance” in any disclosure by Fannie Mae to OFHEO, the SEC, or the public.

RESPONSE:

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

96. All documents that support or refute the allegations in the Notice of Charges that Ms. Spencer knowingly caused Fannie Mae to submit false, inaccurate, or misleading Minimum Capital Reports to OFHEO.

RESPONSE:

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

97. All documents that support or refute the allegation in paragraph 364 of the Notice of Charges that Ms. Spencer “fail[ed] to develop and implement accounting policy in a safe and sound manner likely to result in GAAP-compliant accounting policies and practices.”

RESPONSE:

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

98. All documents that support or refute the allegation in paragraph 371 of the Notice of Charges that Ms. Spencer “fail[ed] to ensure that Fannie Mae’s accounting policy was determined by persons qualified to make accounting policy.”

RESPONSE:

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

99. All documents that support or refute the allegation in paragraph 390 of the Notice of Charges that “a key person dependency” existed in the person of Ms. Spencer.

RESPONSE:

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

100. All documents that support or refute the allegation in paragraph 396 of the Notice of Charges that Ms. Spencer improperly “consolidated] authority in the person of Jeffrey Juliane.”

RESPONSE:

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

101. All documents that support or refute the allegation in paragraph 408 of the Notice of Charges that Ms. Spencer “took credit and responsibility” for the Enterprise’s FAS 91 policy.

RESPONSE:

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

102. All documents that support or refute the allegation in paragraph 408 of the Notice of Charges that the Enterprise’s FAS 91 policy “failed to conform to GAAP.”

RESPONSE:

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

103. All documents that support or refute the allegation in paragraph 411 that Ms. Spencer “creat[ed] a Controller’s Office that lacked the competence and capacity to account for transactions in a manner that was GAAP compliant.”

RESPONSE:

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

104. All documents that support or refute the allegation in paragraph 426 of the Notice of Charges that Ms. Spencer “circumvented internal controls designed to ensure Fannie Mae’s appropriate accounting for amortization expenses, Low Income Housing Tax Credits, and account number 1622-00 for the purpose of attaining financial targets linked to [her] own compensation.”

RESPONSE:

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

105. All documents that support or refute the allegation in paragraph 436 of the Notice of Charges that Ms. Spencer “creat[ed] internal controls systems designed to permit flexibility to manipulate earnings and amortization data for the purpose of attaining financial targets linked to the compensation of senior management, including Spencer.”

RESPONSE:

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

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

RESPONSE:

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

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

RESPONSE:

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

108. All documents that support or refute the allegation in paragraph 484 of the Notice of Charges that Ms. Spencer “engage[d] in a pattern of conduct and/or in unsafe and unsound conduct and violations that contravened the Safety and Soundness Act of 1992 and the orders, rules, and regulations under that Act.”

RESPONSE:

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

109. All documents that support or refute the allegation in paragraph 491 of the Notice of Charges that Ms. Spencer “engage[d] in malfeasance, misfeasance and nonfeasance that caused and would be likely to cause a significant loss to the Enterprise.”

RESPONSE:

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

110. All documents responsive to requests for production made by respondents Raines and Howard.

RESPONSE:

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

Respectfully submitted,

/s/_____

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