

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

January 28, 2011

Mr. Edward DeMarco
Acting Director
Federal Housing Finance Agency
1700 G Street, NW
4th Floor
Washington, DC 20552

Dear Mr. DeMarco:

According to a recent report, taxpayers have spent over \$160 million defending Fannie Mae, Freddie Mac and their former executives in civil lawsuits accusing them of fraud.¹ Of that amount, \$24.2 million in taxpayer funds have been expended so far defending former Fannie Mae CEO Franklin Raines and two of his top lieutenants, with “many more fees to be paid” due to ongoing litigation.² At a time of runaway federal deficits and ten percent unemployment, it is extremely distasteful for the American taxpayers to be forced to pay the legal bills of former executives of Fannie Mae and Freddie Mac, companies which were central players in the financial crisis and which have cost taxpayers nearly **\$151 billion** in bailouts since being taken over by the government in September 2008.³ As head of the Federal Housing Finance Agency (FHFA), you are the official responsible for approving this expense, and I am writing to obtain additional information in order to understand how best to protect taxpayers from having to pay any additional legal bills for Mr. Raines and other former executives.

According to the Securities and Exchange Commission (SEC), under Franklin Raines’ leadership, Fannie Mae used improper accounting procedures to inflate earnings, triggering the payment of bonuses to Mr. Raines and other top executives which they would not otherwise have received.⁴ In response, FHFA’s regulatory predecessor, the

¹ Gretchen Morgenson, “Mortgage Giants Leave Legal Bills to the Taxpayers,” *The New York Times*, January 24, 2011.

² *Id.*

³ FHFA, “Table 1: Quarterly Draws on Treasury Commitments to Fannie Mae and Freddie Mac per the Senior Preferred Stock Purchase Agreement,” *accessed at* <http://www.fhfa.gov/webfiles/19631/TreasFED010320112.pdf>.

⁴ SEC press release, “SEC and OFHEO Announce Resolution of Investigation and Special Examination of Fannie Mae,” May 23, 2006.

Office of Federal Housing Enterprise Oversight (OFHEO), sued Mr. Raines and two other Fannie Mae executives, who settled with the agency in 2008.⁵ However, according to contemporaneous reports, of the \$24.7 million Raines supposedly paid to settle the case against him, \$15.6 million was in the form of worthless options on Fannie Mae stock and \$2 million was covered by a Fannie Mae insurance policy, meaning Mr. Raines ended up paying much less than advertised.⁶ The American taxpayers, on the other hand, received no such reprieve, having paid nearly \$151 billion to bail out Fannie and Freddie so far and millions more defending Mr. Raines and his fellow executives from lawsuits.

In order to better understand the role of FHFA in this matter and to determine whether taxpayers can be protected from any further losses associated with the legal bills of Fannie Mae and Freddie Mac executives, please provide the following information:

1. A full and complete explanation of FHFA's decision to advance and continue advancing legal fees on behalf of former executives of Fannie Mae and Freddie Mac related to lawsuits to which they are a party, after Fannie Mae and Freddie Mac were placed into conservatorship;
2. A full and complete explanation of FHFA's decision to indemnify and continue indemnifying legal fees on behalf of former executives of Fannie Mae and Freddie Mac related to lawsuits to which they are a party, after Fannie Mae and Freddie Mac were placed into conservatorship;
3. The explanations provided in response to #1 and #2 should include, but should not be limited to, the relevant federal and state laws on advancement and indemnification and how relevant employment contracts and company bylaws informed FHFA's decision;
4. Employment contracts for Mr. Franklin Raines, Mr. Timothy Howard, Ms. Leanne Spencer, and Mr. Leland Brendsel;
5. Fannie Mae and Freddie Mac bylaws relevant to FHFA's decision to advance and indemnify legal fees on behalf of former executives of Fannie Mae and Freddie Mac related to lawsuits to which they are a party, after Fannie Mae and Freddie Mac were placed into conservatorship;
6. A full and complete explanation of any discretion FHFA has to modify the existing level of advancement and indemnification of legal fees on behalf of former executives of Fannie Mae and Freddie Mac related to lawsuits to which they are a party, after Fannie Mae and Freddie Mac were placed into conservatorship;

⁵ Eric Dash, "Fannie Mae Ex-Officers Sued by U.S.," The New York Times, December 19, 2006.

⁶ David S. Hilzenrath, "Raines, Federal Regulators Reach Settlement," The Washington Post, April 18, 2008.

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7. All records and communications between FHFA, Fannie Mae, Freddie Mac, the Department of the Treasury, and the White House, referring or relating to the advancement and indemnification of legal fees on behalf of former executives of Fannie Mae and Freddie Mac related to lawsuits to which they are a party, after Fannie Mae and Freddie Mac were placed into conservatorship.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

We request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on February 4, 2011. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Brien Beattie or Peter Haller of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Democratic Member

Enclosure

ONE HUNDRED TWELFTH CONGRESS
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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.