

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA)

and)

OFFICE OF FEDERAL HOUSING,)
ENTERPRISE OVERSIGHT,)

Petitioners,)

v.)

VAUGHN A. CLARKE,)

Respondent.)

No. Misc. 03-3440 (DKC)

SECOND DECLARATION OF DAVID W. RODERER

I, David W. Roderer, declare as follows:

1. I am a Deputy General Counsel in the Office of Federal Housing Enterprise Oversight (OFHEO), where I have been employed for the past three years. My current business address is OFHEO, 1700 G Street, N.W., Washington, D.C. 20552.

2. This Declaration supplements my earlier declaration, dated December 3, 2003, in this matter.

3. On June 7, 2003, OFHEO initiated a special examination of the facts and circumstances surrounding the delay and restatement of financial statements of the Federal Home Loan Mortgage Corporation (“Freddie Mac or the enterprise”). The special examination arose out of OFHEO’s ongoing safety and soundness oversight of Freddie Mac’s operations, including monitoring of Freddie Mac’s accounting policies and practices, engagement of a new auditor, and delay in its 2002 financial statement. From late 2002 through mid-2003, OFHEO steadily increased the intensity of its safety and soundness oversight of Freddie Mac as facts and circumstances regarding deficiencies in the enterprise’s internal controls and operations emerged. During this time, OFHEO received briefings on a variety of matters, including the Baker Botts investigation of Freddie Mac’s internal controls and accounting issues. By June 2003, this information, combined with Freddie Mac’s termination of its senior management in early June 2003, led OFHEO to intensify its probe of Freddie Mac by initiating a “special examination.” The examination was “special” in the sense that it was focused on specific problems at the enterprise and required assignment of staff from outside OFHEO’s examinations office.

4. On December 12, 2003, OFHEO issued a Report of the Special Examination of Freddie Mac (“Report”) (cited portions attached as Exhibit A).¹ This Report documented certain of the examination team’s findings and conclusions, to date, regarding the company’s accounting and disclosure misstatements. This Report was issued to provide the public and Congress greater insight into the practices and conduct of Freddie Mac related to the restatement of earnings and was intended to provide the examination team’s findings and conclusions to date. The Report reflected months of review of documents and conduct of interviews of some of Freddie Mac’s

¹ The entire report is available at <http://www.ofheo.gov/media/pdf/specialreport122003.pdf>.

current and former officers, directors, and employees. As part thereof, OFHEO sought to interview Mr. Vaughn Clarke (the former Executive Vice President and CFO). The Report does not constitute a final determination of any matters related to the Special Examination. The Report makes recommendations to the Director of OFHEO for future action. Report at 163-172.

5. OFHEO's special examination of the matters addressed in the Report is continuing. In particular, OFHEO continues to examine the role of various parties in causing the transactions, accounting misstatements and corporate governance failures that are detailed in the Report. The role of Mr. Clarke is necessarily and inextricably intertwined with the roles of these other parties. They also include various third-party broker-dealers, whose roles in the transactions at issue are also being studied by the ongoing special examination. Although, as a by-product of the special examination, appropriate subjects of enforcement actions have been identified, the underlying purpose of the special examination is a determination of weaknesses in accounting practices, corporate governance and controls that need to be addressed and may be appropriate areas for future rulemaking or examination guidance. Mr. Clarke, as former Executive Vice President and Chief Financial Officer at Freddie Mac, plainly has information relevant to the examination. In addition, the testimony of Mr. Clarke is required to gain a better understanding of the relationships that Freddie Mac had with the broker-dealers and how Freddie Mac worked with them to develop and execute various transactions of concern to the agency. As Chief Financial Officer, Mr. Clarke possesses substantial and unique knowledge regarding the planning and implementation of transactions, such as the "CTUGS," "Linked Swaps" and "Swaption Valuations," and policies, such as earnings "smoothing," that impact the safe and sound operation of Freddie Mac. For these reasons, the issuance of the Report neither

ends nor moots the information that is sought from Mr. Clarke. OFHEO's interest in Mr. Clarke will continue until OFHEO obtains all relevant information he may have or know about the matters being examined.

6. On December 17, 2003, OFHEO filed a notice of charges against Mr. Clarke, which commenced an administrative enforcement action against Mr. Clarke and Freddie Mac seeking appropriate remedies for his involvement in the events that gave rise to the restatement of and delays in audited financial statements at Freddie Mac and related actions and omissions.

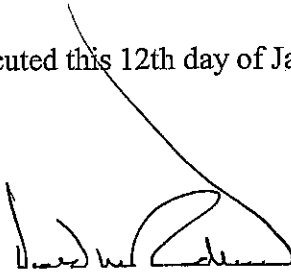
7. The supervisory role of OFHEO (of which the examination process is the critical part) is distinct from the adjudicative authority of the agency to impose remedial and punitive sanctions upon the enterprise or its officers or directors, including former officers and directors. The agency's supervisory role is broad and continuous and includes an evaluation of facts and circumstances to determine whether individual enforcement actions should be brought. By contrast, the exercise of adjudicative authority is more narrowly focused upon particular parties, transactions or events. The adjudicative process cannot begin until a notice of charges is filed in a case. In this case, the agency's adjudicative authority did not focus upon Mr. Clarke until December 17, 2003, when the notice of charges was filed. No administrative subpoena was issued against him after that date.

8. Since early in the examination process, OFHEO has sought to obtain interviews or testimony from Mr. Clarke, but has been met by a series of excuses and delays from him. It is because of Mr. Clarke's delays that the Report and the notice of charges preceded his testimony.

9. Mr. Clarke's cooperation with the examination process is important, among other reasons, because as a former Chief Financial Officer of Freddie Mac, his testimony was, and continues to be, relevant to OFHEO's ongoing examination of Freddie Mac.

10. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of January, 2004.



David W. Roderer
Deputy General Counsel
Office of Federal Housing Enterprise Oversight