



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

December 9, 2005

Mr. Stephen A. Blumenthal
Acting Director
Office of Federal Housing Enterprise Oversight
1700 G Street, NW, Fourth Floor
Washington, DC 20552

Dear Mr. Blumenthal:

On September 8, 2005, the Office of Federal Housing Enterprise Operations (OFHEO) submitted a draft proposed rule entitled "Corporate Governance—Prohibition on Indemnification Payments" to the Office of Management and Budget for review under Executive Order No. 12866. This rule would propose further restrictions to the circumstances under which the two government-sponsored enterprises (GSEs) for housing finance could indemnify their directors and officers for civil money penalties imposed under administrative proceedings and civil actions under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

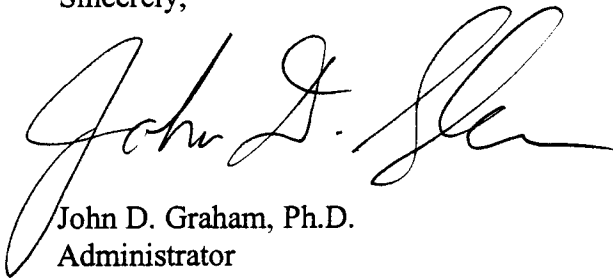
Pursuant to section 6(b)(3) of Executive Order No. 12866, we are returning the draft proposed rule for your reconsideration because it does not meet two provisions of Executive Order No. 12866 that are specified below.

Section 1(b)(3): Identification and Assessment of Alternatives to Direct Regulation. The draft rule does not consider alternatives to the proposed regulatory restriction on indemnification agreements. For example, given that legislation to recast OFHEO is now before the Congress, an alternative to be identified and assessed is deferring rulemaking until Congress has addressed such a rule's statutory authority and context.

Section 1(b)(7): Consider Information on the Consequences of the Intended Regulation. The draft rulemaking does not sufficiently consider its consequences. For example, what effects would the rule have on existing indemnification agreements? Would it prohibit indemnification for acts occurring before the rule becomes final? Similarly, what possible effects might the rule have on the retention of directors and officers, or on their compensation, including current directors and officers with indemnification agreements? Existing indemnification agreements were negotiated with individuals and over time. Would this rule limit the effect of those agreements, contrary to the expectations of the individuals who signed them? Could unexpected risks result in the resignation of directors or officers or the demand for increased compensation? More generally, given existing indemnification agreements, should the transition to the rule's full effectiveness be considered? We respectfully request that OFHEO prepare an analysis of these questions, including a comparison of how these issues are currently addressed in alternative corporate settings.

As a consequence of the concerns identified above, we are returning this rule for your reconsideration. We would request a briefing of our staff on these issues before OFHEO makes a decision as to whether resubmission is appropriate. Our staff is available for further discussion with you on these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Graham". The signature is fluid and cursive, with a large initial "J" and "G".

John D. Graham, Ph.D.
Administrator