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November 16, 2009

Mr. Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
1700 G Street, NW
Washington, DC 20552

Dear Mr. Pollard:

I was shocked and alarmed to learn last week that the Federal Housing Finance Agency (FHFA) is presently operating without oversight from an inspector general. What was even more troubling was to learn that your office petitioned the Department of Justice Office of Legal Counsel (OLC) to wriggle away from the oversight authority of Edward Kelley, who had been performing oversight activities consistent with that of an acting or interim inspector general. Kelley had also been specifically delegated certain audit activities by the Acting Director of FHFA.

Your decision to request OLC to strip Kelley of his authority to act as the interim or acting inspector general raises serious issues.

It is absolutely unconscionable that Fannie Mae and Freddie Mac, which were at the heart of the subprime housing collapse last fall that sent our economy into a tail-spin, should be without independent oversight at a time when the federal government now owns over half of all the mortgages in the United States. These two government-sponsored enterprises have become the largest taxpayer bailout in American history, receiving \$112 billion and counting in direct taxpayer support and nearly a trillion dollars of off-balance sheet support from the Federal Reserve. Removing Mr. Kelley based on the assumption that Congress did not have it in mind for him to have the full authority of an inspector general shows a troubling lack of understanding of Congress' intent in creating FHFA.

On July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA) created FHFA to facilitate the federal takeover of Fannie Mae and Freddie Mac (collectively, the GSEs). Described as “one of the most sweeping government interventions in private financial markets in decades,” the creation of FHFA was intended to increase oversight by consolidating responsibility for the GSEs into a single agency.¹

In a May 2009 your office prepared a memorandum that set in motion a series of events that urged the ouster of Mr. Kelley. The memorandums prepared by your office grossly misinterpret the intent of Congress. According to the May 2009 memo, “Congress did not intend for FHFA to have an Acting or interim IG pending the confirmation of a [presidentially-appointed] IG.”²

I assure you this could not be further from the truth.

In fact, Congress took steps to include language in HERA to ensure that the transition into FHFA’s new role as conservator of the GSEs would happen smoothly and under the watchful eye of an independent overseer. Moreover, in creating the agency, Congress relied on all affected parties to behave responsibly. To assume that Congress did not intend for FHFA to operate **from its inception** with an independent IG in place is irresponsible at the least.

Congress drafted HERA to require “each employee of [the Federal Housing Finance Board (FHFB) to] be transferred to [FHFA] for employment Each employee transferred ... shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer.”³ In addition to clarifying the roles of employees at the newly-created agency, this language was intended to preserve the role of FHFB’s Office of Inspector General (OIG) at the new agency during a period of critical importance to weathering the financial crisis.

Going forward, Congress intended FHFA to permanently operate under the supervision of an Inspector General (IG) appointed by the President and confirmed by the Senate. To make this clear, Congress drafted HERA to amend the Inspector General Act of 1978 (IG Act) to include FHFA among the federal establishments in which an Office of Inspector General is installed.⁴

The intent of Congress to have an IG in place during the transition and beyond is clear. Therefore, it is extremely alarming that your office has actively litigated to create a situation wherein the agency operates without oversight from an IG. Documents

¹ Zachary A. Goldfarb, David Cho and Binyamin Appelbaum, *Treasury to Rescue Fannie and Freddie*, WASH. POST, Sept. 7, 2008.

² FHFA Office of General Counsel Memorandum, “Inspector General Authority and Pay Scale,” May 12, 2009 (updated June 23, 2009).

³ 12 U.S.C. 4511 § 1313(a), (b).

⁴ *Id.* § 1105.

published last week clearly show FHFA sought guidance from the Department of Justice (DOJ) in order to effectively undermine Congress's clear intent.

That your office would move to restrict Mr. Kelley's ability to conduct the investigative functions of an IG during a time of unprecedented need for agency oversight begs several important questions. Absent a full and complete explanation of your reasons for seeking DOJ guidance, there exists the appearance that you took action to avoid IG oversight for nefarious purposes. In addition to exposing FHFA to waste, fraud and abuse, stripping Mr. Kelley of the independence and authority granted to all IGs by the IG Act may further erode public confidence in the agency.⁵

Neil Barofsky, the Special Inspector General for the Troubled Assets Relief Program (SIGTARP), described precisely why Mr. Kelley's loss creates significant problems. "It's a serious gap in oversight. It does impact what we do. [Mr. Kelley] was a member of our TARP IG council and a partner in our investigative work."⁶ Mr. Barofsky further explained that he still investigates areas of FHFA, but his mandate only covers "a sliver of what they do. Fannie and Freddie are awfully big. The idea that the agency responsible for conservatorship of Fannie Mae and Freddie Mac doesn't have an inspector general should be a serious cause of concern."⁷

The concerns raised by SIGTARP crystallize the problems with the current oversight structure at FHFA. In Mr. Kelley's current role conducting certain audits on behalf of the agency, he reports directly to the Office of the Director.⁸ Mr. Kelley has the title of Associate Director for Internal Audit.⁹ FHFA employees are presently instructed to report violations normally directed to an agency's OIG to FHFA's Office of Internal Audit or to your office.¹⁰

The problems with this arrangement are obvious and significant. As part of agency management reporting directly to the agency's Director, Mr. Kelley's independence is completely undermined. Furthermore, agency employees are chilled from blowing the whistle on waste, fraud and abuse at FHFA because their reports are channeled through those against whom their complaints are most likely to be directed.

⁵ There is already public speculation that FHFA removed its IG to avoid oversight of activities outside the agency's mandate. According to Graham Fisher & Co. analyst Josh Rosner, a new inspector general may find that the Obama administration isn't using the companies properly. "The role of the conservator is to restore Fannie and Freddie to financial health, but they are instead using them to mop up losses in the system," Rosner told Bloomberg News in an interview. "They are using them to transfer losses from other private companies and under-water homeowners to taxpayers and shareholders." Dawn Kopecki, *Obama Needs More Time to Find Fannie, Freddie Agency Inspector*, BLOOMBERG, Nov. 12, 2009.

⁶ Ryan Grim, *Fannie and Freddie Fire Their Own Inspector General*, HUFFINGTON POST, Nov. 10, 2009.

⁷ *Id.*

⁸ FHFA website, "Office of Inspector General," available at <http://www.fhfa.gov/Default.aspx?Page=122> (last visited Nov. 12, 2009).

⁹ *Id.*

¹⁰ *Id.*

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If ambiguity in the legislation that created FHFA and its Office of Inspector General contributed to the current situation, then I assure you I will work with my colleagues in Congress to remedy that. However, the suite of serious issues created by FHFA operating absent an IG requires immediate attention. Regardless of any legislative action, I urge you to write to Acting Director Edward DeMarco and officially request that Mr. Kelley be immediately reinstated as Acting Inspector General of FHFA. Mr. Kelley should continue to serve in that role with the full independence and authority granted to the position under the IG Act until a permanent replacement is nominated by the President and confirmed by the Senate.

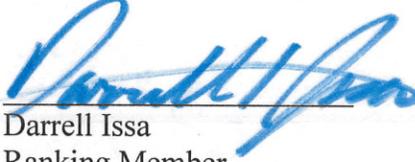
Because the seriousness of this matter requires a careful examination by the Committee, I request that you provide full and complete responses to the following (including relevant documentation) no later than November 30, 2009:

1. What events led the FHFA General Counsel's office to prepare the May 12, 2009 memorandum regarding "Inspector General Authority and Pay Scale"?
2. Did any personnel from FHFA, including but not limited to yourself, attempt to mediate this dispute with Mr. Kelley prior to requesting a ruling from OLC?
3. Is it presently your position that Mr. Kelley does not have the authority to act as the agency's Inspector General?
4. As I understand it, the Acting Director asked Mr. Kelley to conduct certain audit activities. Please specifically identify the duties delegated to Mr. Kelley.
5. How many employees does OIG currently have? In your view, does Mr. Kelley have the authority to hire additional staff? If not, who if anybody does?
6. Your office has taken the unusual position that Mr. Kelley was acting as Inspector General without authority. The position of the General Counsel's office was explained in a memorandum dated June 23, 2009, and subsequently formed the basis of a referral to the Department of Justice Office of Legal Counsel. Why did you authorize that action?
7. As you read the legislation that created FHFA, is it your understanding that Congress **did not** intend Mr. Kelley to perform the functions of inspector general until such time that a new inspector general was nominated by the President and confirmed by the Senate?
8. The legislation creating FHFA rolled over employees of FHFB into the new agency. Is it your understanding that FHFB OIG employees are exempted from this section of the legislation?

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Thank you for your attention to this important matter. I look forward to your responses. If you have any questions about this request please contact Jonathan Skladany or Steve Castor of the Committee staff at 202-225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman