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November 16, 2009

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Mr. Daniel L. Koffsky
Deputy Assistant Attorney General
Office of Legal Counsel
U.S. Department of Justice
Washington, DC 20530

Re: Your opinion dissolving the authority of FHFA's OIG

Dear Mr. Koffsky:

I was shocked and alarmed to learn last week that your office purported to strip the authority of Edward Kelley to act as Inspector General for the Federal Housing Finance Agency (FHFA). It was especially disappointing to see the hours of legal work collectively expended by you and your staff, and the office of FHFA's General Counsel to reach the absurd conclusion that the federal agency responsible for overseeing Fannie Mae and Freddie Mac ought to be without an independent inspector general.

Your overly technical and contrived legal ruling is a little bit like deciding that because a speed limit sign on a highway was not posted at the correct height, not only should there be no speed limit, but the authority of the police to enforce any speed limit should be dissolved.

Just because FHFA General Counsel Alfred M. Pollard requested your office to render an opinion did not mean you had to write the type of opinion you did. While I have considerable issues with your legal reasoning, analysis, and conclusions, the effect of your opinion creates a gravely serious situation for the federal government and the taxpayers. Consequently, in my view, you exercised remarkably poor judgment.

In most circumstances when public officials and judges are entrusted to make rulings of the type your office has responsibility for, the public expects careful deliberation and a judicious exercise of discretion. You very well could have and should have exercised your discretion to not issue this opinion. Likewise, you could have and should have better considered the practical implications of issuing such an opinion.

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,

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should be without independent oversight at a time when the federal government now owns over half of all the mortgages in the United States. Yet, as you would have it, they are. 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. These bailouts threaten the long-term fiscal solvency of the United States and the continued strength of the dollar.

Because of the seriousness of this matter, I request you to provide answers to the following questions related to this unusual situation. I also ask that you produce all requested documents. Please provide full and complete responses to the following by November 30, 2009:

1. On what specific legal authority did your office act in preparing the memorandum for FHFA General Counsel Alfred M. Pollard dated September 8, 2009?
2. If you believe the memorandum constitutes binding legal authority on FHFA, explain why?
3. Does the Office of Legal Counsel (OLC) have the discretion not to prepare an opinion when asked for one by an executive branch agency or official?
4. If OLC does have such discretion, explain why you did not exercise it in this instance?
5. Produce all correspondence, memorandums, and other documents reviewed or considered by you or your staff in preparation of this memorandum.
6. With regard to the preparation of this memorandum, identify any communications you or your staff had with White House personnel, including but not limited to personnel in the White House Counsel's office.

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