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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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November 16, 2009

Mr. Gregory B. Craig  
Counsel to the President  
The White House  
Washington, DC 20500

Dear Mr. Craig:

I am writing to inquire about why the President is dragging his feet in appointing a permanent inspector general for the Federal Housing Finance Agency (FHFA). We are now nearly eleven months into this Presidency. The President's failure to act has left the agency charged with overseeing two of the most irresponsible government sponsored entities – Fannie Mae and Freddie Mac – without any inspector general. In light of the Democratically-controlled, filibuster-proof Senate, the President's failure to act is unacceptable and reckless.

The President's failure to ensure that FHFA has a permanent watchdog in place is inconsistent with his pledge of openness and transparency in government. In a Memorandum for the Heads of Executive Departments and Agencies, the President wrote: "My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration."<sup>1</sup>

News that FHFA is currently operating without an Inspector General (IG) was reported last week by the *Huffington Post*.<sup>2</sup> The situation had evidently turned so poisonous that agency officials leaked a number of internal memos.

The memos reveal a bitter internal struggle by the FHFA General Counsel Alfred M. Pollard to liberate the agency from the oversight authority of Edward Kelley, who had been performing a number of functions consistent with that of an acting or interim

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<sup>1</sup> The President, Memorandum for the Heads of Executive Departments and Agencies, Subject: Transparency and Open Government, Jan. 21, 2009, [http://www.whitehouse.gov/the\\_press\\_office/TransparencyandOpenGovernment/](http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/) (emphasis added).

<sup>2</sup> Ryan Grim, *Fannie and Freddie Fire Their Own Inspector General*, HUFFINGTON POST, Nov. 10, 2009 [hereinafter Grim story].

inspector general. The papers show that lawyers from Pollard's office spent an untold number of hours litigating the agency's way out of the IG's authority.

This summer Pollard petitioned the Department of Justice Office of Legal Counsel (OLC) and requested a ruling to effectively remove Kelley. The General Counsel's office evidently felt it was necessary – and worth taxpayer dollars – to litigate this matter despite the fact that FHFA Acting Director Edward DeMarco had specifically delegated certain audit activities to Mr. Kelley. Kelley had been the inspector general at FHFA's predecessor agency, the Federal Housing Finance Board (FHFB).

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 received 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.

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.<sup>3</sup>

Congress drafted HERA to require “each employee of [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.”<sup>4</sup> 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.<sup>5</sup>

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

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<sup>3</sup> Zachary A. Goldfarb, David Cho and Binyamin Appelbaum, *Treasury to Rescue Fannie and Freddie*, WASH. POST, Sept. 7, 2008.

<sup>4</sup> 12 U.S.C. 4511 § 1313(a), (b).

<sup>5</sup> *Id.* § 1105

That FHFA officials 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 FHFA's motives in seeking DOJ guidance, there exists the appearance that action was taken 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 new agency.<sup>6</sup>

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."<sup>7</sup> 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."<sup>8</sup>

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.<sup>9</sup> Mr. Kelley has the title of Associate Director for Internal Audit.<sup>10</sup> FHFA employees are presently instructed to report violations normally directed to an agency's OIG to FHFA's Office of Internal Audit or to the agency's General Counsel.<sup>11</sup>

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.

If ambiguity in the legislation that created FHFA and its Office of Inspector General contributed to the current situation, then I assure the President that I will work

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<sup>6</sup> 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.

<sup>7</sup> Grim story.

<sup>8</sup> *Id.*

<sup>9</sup> FHFA website, "Office of Inspector General," available at <http://www.fhfa.gov/Default.aspx?Page=122> (last visited Nov. 12, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Mr. Gregory B. Craig

November 16, 2009

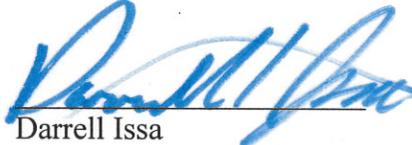
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with my colleagues in Congress to remedy that. However, the suite of serious issues created by FHFA operating absent an IG requires immediate attention.

Because of the seriousness of this matter, I urge the President to immediately instruct FHFA Acting Director Edward DeMarco to delegate all of the duties of inspector general to Edward Kelley. 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. There is no reason why Mr. Kelley should not serve as acting or interim inspector general until the President appoints a permanent Inspector General for FHFA. I further urge the President to act quickly to nominate a permanent Inspector General for this important agency.

Thank you for your attention to this important matter.

Sincerely,



Darrell Issa  
Ranking Member

cc: The Honorable Edolphus Towns, Chairman