

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 10, 2017

The Honorable Melvin L. Watt  
Director  
Federal Housing Finance Agency  
Constitution Center  
400 7<sup>th</sup> Street SW  
Washington, D.C. 20219

Dear Mr. Watt:

On March 23, 2017, the Federal Housing Finance Agency (FHFA) Inspector General (IG) transmitted a Management Alert about an administrative investigation into a conflict of interest on the part of Timothy Mayopoulos, the President and Chief Executive Officer (CEO) of the Federal National Mortgage Association (FNMA or Fannie Mae).<sup>1</sup> The investigation concerns the timeliness and completeness of Mayopoulos unilaterally disclosing his “significant and ongoing” dating relationship with the former Chief Legal Officer (CLO) and Corporate Secretary of Fifth Third Bancorp (Fifth Third), a mortgage originator and servicer with which Fannie Mae conducts billions of dollars in business.<sup>2</sup> The FHFA IG found that “a reasonably prudent director and CEO, in like position and under similar circumstances and similar authorities, would have disclosed the relationship in August 2015 when [Fifth Third’s CLO] was offered and accepted the [position at that bank].”<sup>3</sup>

To stabilize the housing market in the aftershock of the financial crisis, FHFA used its authority in 2008 to place the mortgage giant Fannie Mae into its conservatorship, and subsequently redirected \$116 billion to the government-sponsored entity (GSE) in an attempt to ensure it had the necessary capital to cover its portfolio’s losses on defaulted mortgages.<sup>4</sup> As its conservator, FHFA is charged with “ensur[ing] that Fannie Mae ... operate[s] in a safe and

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<sup>1</sup> Office of Inspector General, Federal Housing Finance Agency. *Administrative Investigation into Anonymous Hotline Complaints Concerning Timeliness and Completeness of Disclosures Regarding a Potential Conflict of Interest by a Senior Executive Officer of an Enterprise (OIG-2017-003)*. Mar. 23, 2017.

<sup>2</sup> *Id.* at p. 1.

<sup>3</sup> *Id.* at p. 2.

<sup>4</sup> Federal Housing Finance Agency, Office of Inspector General, *A Brief History of the Housing Government-Sponsored Enterprises*, <https://www.fhfaig.gov/Content/Files/History%20of%20the%20Government%20Sponsored%20Enterprises.pdf>. See also, Fannie Mae 10k Exhibit 99.1 (Feb. 17, 2017), <https://seekingalpha.com/filings/pdf/11866662.pdf>.

sound manner so that [it] serve[s] as a reliable source of liquidity and funding for housing and finance and community investment.”<sup>5</sup>

In that vein, FHFA has long subjected Fannie Mae to regulations and policies that require the establishment and administration of a code of conduct and ethics. In 2006, FHFA’s predecessor agency, the Office of Federal Housing Enterprise Oversight (OFHEO), adopted regulations that require Fannie Mae to adhere to some rudimentary ethical standards. They require FHFA to:

establish and administer a written code of conduct and ethics that is reasonably designed to assure that its directors, officers, and employees discharge their duties and responsibilities in an objective and impartial manner that promotes honest and ethical conduct, compliance with applicable laws, rules, and regulations accountability for adherence to the code, and prompt internal reporting of violations of the code to appropriate persons identified in the code.<sup>6</sup>

As President and CEO, Mayopoulos is bound by Fannie Mae’s Code of Conduct and Conflict of Interest Policy for Members of the Board of Directors (Directors’ Code), its Code of Conduct for Employees (Employee Code), and also its Conflict of Interest Policy (COI Policy), which all recognize that personal relationships may give rise to potential, apparent, or actual conflicts of interest and require prompt disclosure of circumstances, situations, and activities that may have conflict of interest implications. More specifically, Fannie Mae’s Director Code classifies a conflict of interest as “[a]ris[ing] when a person’s interest interferes in any way – or even appears to interfere – with the interests of the Corporation as a whole. A conflict can arise when a director takes action or has interests that make it difficult to perform his ... work objectively and effectively for [Fannie Mae].”<sup>7</sup>

In November 2015, Mayopoulos affirmatively decided not to disclose his relationship with Fifth Third’s CLO. In his response to a direct question in Fannie Mae’s annual Conflict of Interest Questionnaire, inquiring, “[a]re you aware of any issue or potential conflict of interest involving yourself or a family member that could potentially cause negative publicity to Fannie Mae that has not been previously disclosed to [Fannie Mae’s Office of Compliance and Ethics].”<sup>8</sup> Then, on March 25, 2016, Mayopoulos “sought guidance” about his relationship with Fifth Third’s CLO from his subordinate, the Chief Compliance and Ethics Officer (CCEO), who

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<sup>5</sup> Melvin Watt, Federal Housing Finance Agency, *2015 Annual Report to Congress* (Jun. 15, 2016), [https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA\\_2015\\_Report-to-Congress.pdf](https://www.fhfa.gov/AboutUs/Reports/ReportDocuments/FHFA_2015_Report-to-Congress.pdf).

<sup>6</sup> See, in November 2015, FHFA issued a final rule (12 C.F.R. § 1239.10), which replaced the OFHEO regulation (12 C.F.R. § 1710.14 (2005)), but retained the same fundamental disclosure requirements.

<sup>7</sup> Fannie Mae, Code of Conduct and Conflict of Interests Policy for Members of the Board (Directors’ Code), Section A.1, (Last Revised: Sept. 14, 2010), <http://www.fanniemae.com/resources/file/aboutus/pdf/codeofethics.pdf>.

<sup>8</sup> Federal Housing Finance Agency, Office of Inspector General, letter to H. Comm. On Oversight & Gov’t Reform, Hon. Jason Chaffetz and Hon. Jim Jordan, *Mr. Mayopoulos’ 2015 Annual Conflict of Interest Questionnaire*, FHFAOIG-Production to HOCR-2017-000110-113 (Apr. 6, 2017).

verbally instructed Mayopoulos to “seek guidance from Compliance and Ethics if any business decision related to Fifth Third Bank was presented to him to avoid any appearance of conflict given his personal relationship.”<sup>9</sup> This casual advice, in effect, imposed a recusal requirement on Mayopoulos, but ambiguity remained about who reviewed and enforced that mandate other than Mayopoulos in his own capacity. Furthermore, the CCEO chose not to properly document this disclosure, which violates internal Fannie Mae disclosure protocols as set in the Directors’ Code, amongst other policies.

During the week of July 11, 2016, after having been with the bank for less than a year, its CLO informed her superiors of her relationship with Mayopoulos.<sup>10</sup> Shortly thereafter, Fifth Third fired her due to the conflict of interest created by her relationship with Fannie Mae’s President and CEO, citing this situation as “irreconcilable” and that had they known of the relationship, they would not have hired her.<sup>11</sup> At the time Fifth Third’s CLO was hired, in September 2015, Fifth Third was among Fannie Mae’s top 30 sellers.<sup>12</sup> In the time during which Mayopoulos failed to promptly disclose his relationship with her (September 2015 through July 2016), Fifth Third sold \$944 million in loans to Fannie Mae and serviced between \$13.2 billion and \$14.1 billion of Fannie Mae loans.<sup>13</sup>

In the wake of Fifth Third’s announcement, reports of her firing inaccurately referenced, “according to people familiar with the matter,” that Fannie Mae had been formally informed of their relationship since the start of the CLO tenure at Fifth Third in September 2015. In an August 2016 statement, Fannie Mae stated that Mayopoulos had “disclosed the relationship to Fannie Mae’s Compliance and Ethics Office in March [2016], which “provided appropriate direction to Mayopoulos, [which] he followed. Further, Mayopoulos has no involvement in Fannie Mae’s relationship with Fifth Third Bank.”<sup>14</sup> Such reporting inaccurately led to the assumption that Fannie Mae was vigilantly and constantly checking for conflicts of interest

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<sup>9</sup> *Id.* at Cadwalader letter dated September 14, 2016, FHFAOIG-Production to HOCR-2017-000004-5 (Apr. 6, 2017).

See also, Memorandum from ██████████, Vice President, Ethics & Investigations, Fannie Mae to ██████████, Senior Vice President & Chief Compliance & Ethics Officer, Fannie Mae (Jul. 25, 2016), at Federal Housing Finance Agency, Office of Inspector General, letter to H. Comm. On Oversight & Gov’t Reform, Hon. Jason Chaffetz and Hon. Jim Jordan, *Internal FM Ethics Memorandum on Mr. Mayopoulos’ “Disclosure of Relationship”* (July 25, 2016), FHFAOIG-Production to HOCR-2017-000155-157 (Apr. 6, 2017).

<sup>10</sup> *Id.* at Cadwalader letter dated September 14, 2016, FHFAOIG-Production to HOCR-2017-000005 (Apr. 6, 2017).

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

<sup>12</sup> Office of Inspector General, Federal Housing Finance Agency. *Administrative Investigation into Anonymous Hotline Complaints Concerning Timeliness and Completeness of Disclosures Regarding a Potential Conflict of Interest by a Senior Executive Officer of an Enterprise* (OIG-2017-003) (Mar. 23, 2017).

<sup>13</sup> *Id.*

<sup>14</sup> Ben McLannahan, *Lawyer’s sacking over Fannie Mae CEO relationship reveals divide*, Financial Times (Aug. 11, 2016).

See also, Emily Glazer et al., *Romantic Relationship with Fannie Mae CEO Prompted Firing of Fifth Third Lawyer*, WSJ (Aug. 10, 2016).

See also, Federal Housing Finance Agency, Office of Inspector General, letter to H. Comm. On Oversight & Gov’t Reform, Hon. Jason Chaffetz and Hon. Jim Jordan, *Internal FM Ethics Memorandum on Mr. Mayopoulos’ “Disclosure of Relationship”* (July 25, 2016), FHFAOIG-Production to HOCR-2017-000155-157 (Apr. 6, 2017).

among Mayopoulos and Fifth Third dealings due to his disclosed relationship with the bank's CLO. The Committee learned from the March 2017 IG report that, in fact, that March 2016 disclosure was not in a formal manner, nor was it timely.

Meanwhile, on July 20, 2016, Mayopoulos sponsored an out-of-cycle pay increase for the CCEO, to whom he had referenced his relationship with Fifth Third's CLO earlier that year in March.<sup>15</sup> Per Mayopoulos's endorsement, Fannie Mae's Audit Committee recommended to the Compensation Committee, which met later that evening, to recommend to the Board to bump the CCEO's compensation from \$985,000 to \$1,050,000.<sup>16</sup> This request represents a 7 percent increase and 84 percent of the market 50<sup>th</sup> percentile, which is higher than Fannie Mae's guidelines.<sup>17</sup> Days later, on July 25, 2016, Mayopoulos followed through on advice from the CCEO on July 22, 2016, to inform you about his relationship with Fifth Third's CLO.<sup>18</sup>

The failure on the part of Mayopoulos to timely and completely disclose their relationship to Fannie Mae and his out-of-cycle request for a salary increase for the CCEO raises substantial questions for the Committee. As FHFA IG notes, "Mr. Mayopoulos' deliberate and unilateral decision not to disclose to the [Nominating and Corporate Governance Committee (NGC)] his relationship with [Fifth Third's CLO], from her acceptance of the CLO position in August 2015 until after her termination by Fifth Third in late July 2016, had deleterious effects on Fannie Mae's corporate governance that transcended his disregard of his duties."<sup>19</sup> Fannie Mae's seemingly lackadaisical disclosure protocols and the related appearance of a *quid pro quo* jeopardize the ethical and operational integrity of Fannie Mae, the government-sponsored entity that receives substantial government backing.

FHFA IG recommends that you consider removing Mayopoulos as CEO, whom you have the power to remove at will, due to his "inappropriate tone at the top."<sup>20</sup> Specifically, the IG recommends taking "disciplinary action against Mr. Mayopoulos *up to and including his removal as CEO for repeated breaches of duty to Fannie Mae*" [emphasis added].<sup>21</sup> Furthermore, according to the FHFA IG recommendation, should you "impose discipline short of removal on Mr. Mayopoulos, [you] should direct [him] to amend the email message he sent to

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<sup>15</sup> Federal Housing Finance Agency, Office of Inspector General, letter to H. Comm. On Oversight & Gov't Reform, Hon. Jason Chaffetz and Hon. Jim Jordan, *PowerPoint Presentation on Executive Vice President and Senior Vice President Performance, including Mr. Mayopoulos' Direct Reports Given to Compensation Committee (January 20, 2016) (excerpted)*, FHFAOIG-Production to HOCR-2017-000142-145 (Apr. 6, 2017).

<sup>16</sup> *Id.* at Fannie Mae Board Minutes and Materials regarding increase in Chief Compliance Officer's (CCO) compensation (July 2016) (excerpts), FHFAOIG-Production to HOCR-2017-000128 (Apr. 6, 2017).

<sup>17</sup> *Id.* at Fannie Mae Board Minutes and Materials regarding increase in Chief Compliance Officer's (CCO) compensation (July 2016) (excerpts), FHFAOIG-Production to HOCR-2017-000119 (Apr. 6, 2017).

<sup>18</sup> *Id.* at "Preliminary and Tentative Timeline" prepared by Fannie Mae, FHFAOIG-Production to HOCR-2017-000140-141 (Apr. 6, 2017).

<sup>19</sup> Office of Inspector General, Federal Housing Finance Agency. *Administrative Investigation into Anonymous Hotline Complaints Concerning Timeliness and Completeness of Disclosures Regarding a Potential Conflict of Interest by a Senior Executive Officer of an Enterprise* (OIG-2017-003) (Mar. 23, 2017), at pp. 5-6.

<sup>20</sup> *Id.* at p. 6.

<sup>21</sup> *Id.* at p. 28.

Fannie Mae employees on August 11, 2016, with a new email in which he acknowledges that he did not follow Fannie Mae Governance Authorities in connection with his disclosure of a situation that could give rise to a conflict of interest and recommits to follow the letter and spirit of those authorities.”<sup>22</sup> On May 8, 2017, you responded to FHFA IG’s Management Alert and recommendations, stating you “will take any actions [you] consider appropriate by June 21, 2017.”<sup>23</sup>

Considering this recommendation and your recent response, and based on supporting evidence and documentation provided to the Committee, we request a written response to the following questions as soon as possible, but no later than May 24, 2017, and a briefing on Fannie Mae’s internal protocols concerning conflict of interest disclosures to be scheduled by the same deadline.

1. Do you agree with FHFA IG’s recommendation to take disciplinary action against Mayopoulos up to and including his removal as CEO for repeated breaches of duty to Fannie Mae? If so, will you exercise your statutory authority to do so?
2. Has Fannie Mae or FHFA retrospectively reviewed any and all communications and dealings between Fannie Mae and Fifth Third spanning the time from September 2015 when Fifth Third hired its former CLO up until the present date?
3. What action has been taken since August 1, 2016, when the NGC discussed the conflict of interest and notified each Board member to address Mayopoulos’ delayed disclosure of this particular conflict of interest?<sup>24</sup>
4. Has the NGC fulfilled its responsibilities with respect to resolving conflicts of interest for Fannie Mae’s President and CEO? Has the NGC since put into place mitigation controls to minimize franchise risk to Fannie Mae from conflicts of interest?
5. Please provide the written views of the Board pertaining to the March 23 FHFA IG report that had been provided to you on May 1, 2017.
6. In your May 8, 2017, letter to FHFA IG, you referenced taking action by June 21, 2017. Please share with the Committee your reasoning for this deadline and your intent to share such decided action with the Committee prior to that date.

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<sup>22</sup> *Id.* at 24.

<sup>23</sup> Melvin Watt, Director, Federal Housing Finance Agency, letter to Laura Wertheimer, Inspector General, Federal Housing Finance Agency, *Management Response: Administrative Investigation of Hotline Complaints: Conflicts of Interest Issue (OIG-2017-003)*, May 8, 2017.

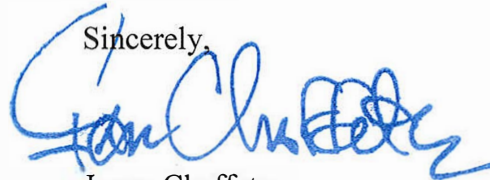
<sup>24</sup> Federal Housing Finance Agency, Office of Inspector General, letter to H. Comm. On Oversight & Gov’t Reform, Hon. Jason Chaffetz and Hon. Jim Jordan, “*Preliminary and Tentative Timeline*” prepared by Fannie Mae, FHFAOIG-Production to HOCR-2017-000140-141 (Apr. 6, 2017).

The Honorable Melvin L. Watt  
May 10, 2017  
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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

Thank you for your prompt attention to this matter. Please contact Sarah Vance of the Committee staff at (202) 225-5074 with any questions about this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz", written in a cursive style.

Jason Chaffetz  
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member