



# Federal Housing Finance Agency

Office of Internal Audit  
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November 30, 2009

The Honorable Darrell Issa  
Ranking Member, Committee on Oversight and  
Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Ranking Member Issa:

I received your letter dated November 16, 2009 in which you request that I respond to several questions. My responses are provided below:

**1. As I understand the legislation creating FHFA, employees of the Federal Housing Finance Board (FHFB) were to be rolled over into the new agency. Is it your understanding that FHFB OIG employees also were to be rolled over to the new agency?**

Yes. FHFB OIG employees were transferred into the newly created Federal Housing Finance Agency along with all other employees from FHFB.

**2. How many employees does OIG currently have? In your view, do you have the authority to hire additional staff?**

I am not in agreement with the Office of Legal Counsel's (OLC) opinion dated September 8, 2009 that the Housing and Economic Recovery Act of 2008 did not allow for the creation of an Office of Inspector General until an Inspector General is nominated by the President and confirmed by the Senate. However, I was advised by my Counsel that the OLC opinion is binding. Consequently, there currently are no FHFA-OIG employees.

Currently, I have two employees that report to me in the Office of Internal Audit (OIA).

As the Associate Director of OIA, I do have authority to hire staff. However, it is my expectation that an inspector general will be nominated by the President and confirmed by the Senate soon. At that time, OIA will be abolished. Only the IG can staff his/her office. Consequently, I am unable to

assure anyone I hire that they would have a place in the IG's office and have decided not to attempt to hire for my current office for that reason.

Although the Director questioned the propriety of me acting as the Inspector General for FHFA, during the period October 28, 2008 until September 8, 2009, I performed the duties of an acting Inspector General. As such, I took steps necessary to hire staff. The major impediment to my efforts was my inability to recruit highly qualified candidates in the absence of the permanent IG being selected. Consequently, I applied for and was granted authority by the Office of Personnel Management for OIG to hire retired federal annuitants with a waiver of the salary offset requirement. I did not have an opportunity to use the authority before receiving the OLC opinion.

**3. If you do not have the authority to act as interim or acting Inspector General, is it true that FHFA is then operating without any inspector general?**

Based on the opinion issued by OLC on September 8, 2009, I do not have authority to act as interim or acting IG for FHFA. Consequently, you are correct that FHFA is currently operating without an inspector general or an Office of Inspector General.

**4. As I understand it, the Acting Director of FHFA has asked you to conduct certain audit activities. Please specifically identify the duties delegated to you by the Acting Director.**

A written delegation of authorities has not been prepared. However, the Acting Director has verbally authorized me to identify potential audit areas for his review and approval. Upon his approval of planned audits, I am authorized to conduct or contract for the conduct of the audits in accordance with generally accepted government auditing standards.

I am authorized to coordinate my audit activities with other audit entities including GAO, TARP-OIG, etc.

I am authorized to complete audits that were in process at the time that I received the OLC opinion dated September 8, 2009.

I am authorized to accept allegations and complaints regarding FHFA operations and to coordinate with the Acting Director and the Office of General Counsel in addressing these allegations and complaints.

I am authorized to hold in confidence any complaints, allegations, and confidential or sensitive information that my staff and I collected during the period October 28, 2008 thru September 8, 2009. During this period, I conducted myself as the Acting Inspector General for FHFA. The information will be turned over to the Inspector General upon his/her appointment.

I am authorized to perform certain administrative tasks to facilitate the operations of an Office of Inspector General once an IG is appointed. These include the development of proposed staff position descriptions, proposing various options for initially funding FHFA-OIG operations, establishing liaisons with persons to facilitate the appropriations process for FHFA-OIG, developing proposed policies and procedures for the FHFA-OIG, and developing a proposed strategy for the IG to hire retired annuitants to facilitate initial staffing of FHFA-OIG.

**5. As you interpret the legislation that created FHFA, is it your understanding that Congress intended you 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?**

As the Inspector General for the Federal Housing Finance Board (FHFB), I had a Memorandum of Understanding with the Counsel for the FDIC Office of Inspector General to provide legal support to my office. After HERA was passed in July 2008, in September 2008, I requested my Counsel to advise me on whether the Act allowed for my office to become the FHFA-OIG once FHFB and the Office of Federal Housing Enterprise Oversight (OFHEO) were merged. My Counsel advised me that the Congress did intend and the Act did allow for FHFB-OIG staff to form the staff for the FHFA-OIG and as the senior official on the staff, I could perform the duties of acting IG until a presidentially appointed IG took office. I continue to agree with the advice provided by my former Counsel.

**6. The General Counsel of FHFA has taken the unusual position that you are 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. Did any personnel from the general counsel's office communicate to you the reason for the OLC referral, and if they did, please explain.**

The Director of FHFA first brought the issue to my attention in December 2008. Between December 2008 and the issuance of OLC's opinion on September 8, 2009, I had at least monthly discussions with the Director and Deputy Director regarding this issue and my Counsel had numerous communications on this issue with FHFA's General Counsel or an attorney on his staff.

On July 13, 2009, my Counsel and I met with the Director, Deputy Director, and General Counsel to discuss our disagreement over this issue. After much discussion, at the end of the meeting we still disagreed. The Director advised me that the matter would need to be referred to the Department of Justice for resolution because of his concerns that I was operating without appropriate authority.

I had no objection to the Director seeking an opinion from OLC and I expected that the OLC opinion would support my position. However, the request to OLC was prepared and submitted without any input from me and without copies of any communications I had previously provided to the General Counsel. Only in response to OLC's request did: (1) agency officials advise me that a request had been submitted to OLC, and (2) the General Counsel's Office provide OLC with my letter dated July 7, 2009. In that letter, I expressed my reasons for disagreeing with the General Counsel's position that I did not have authority to act as the IG for FHFA until an IG was presidentially appointed.

**7. Did any personnel from FHFA, including but not limited to the Acting Director or the General Counsel, attempt to mediate this dispute with you prior to requesting a ruling from OLC?**

Yes. Please see my response to question 6 above.

**8. Identify the audits, evaluations, inspections, or investigations that have been halted as a result of OLC's legal opinion?**

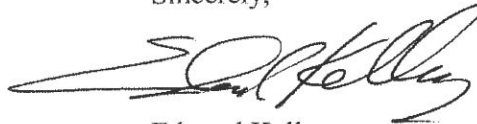
Based on generally accepted government auditing standards, as an office of internal audit, my office is not organizationally independent. Consequently, as a result of the OLC opinion, we no longer have the ability to conduct independent audits, evaluations, and inspections. Further, we lack any authority to perform criminal investigations.

Since receiving the OLC opinion, I have worked with the Acting Director to complete all audits, evaluations, and inspections that were in process. These projects have been or are being completed under the same policies and procedures I employed as acting IG from October 28, 2008 until September 8, 2009. We are in the process of identifying audits that I believe should be initiated. However, because of the organizational independence problem with my office of internal audit, I will recommend to the Acting Director that some audits be delayed until an IG office is established. These include audits of: a) the decision to place Fannie Mae and Freddie Mac into conservatorship, b) FHFA's ability to serve as both the Conservator and regulator of Fannie Mae and Freddie Mac, c) the regulation of compensation at the GSEs, and d) the quality of examinations of Fannie Mae and Freddie Mac. It is my view that OIA audit reports on these areas would not be viewed as objective and complete regardless of my efforts to assure otherwise.

No investigations were in process at the time the OLC opinion was received. However, we discontinued all coordination with other investigation entities that were involved in FHFA related investigation activities to avoid any possible harm to these efforts. We continue to conduct preliminary reviews of allegations/complaints that we receive in order to make referrals to entities that have authority to pursue the allegation/complaint.

If you have any questions or I can be of any further assistance, please feel free to contact me at 202-408-2544.

Sincerely,



Edward Kelley  
Associate Director for Internal Audit

cc: The Honorable Edolphus Towns, Chairman  
Edward DeMarco, Acting Director FHFA



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To: Darrell Kleska Date: 11/30/09  
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Notes/Comments: \_\_\_\_\_

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