

United States Senate

WASHINGTON, DC 20510

April 4, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Scott Dahl
Integrity Committee Chair
Council of the Inspectors General on Integrity and Efficiency
Inspector General of the U.S. Department of Labor
935 Pennsylvania Avenue, N.W.
Room 7452
Washington, D.C. 20535

The Honorable Carolyn Lerner
Special Counsel
Office of Special Counsel
1730 M Street, N.W.
Suite 300
Washington, D.C. 20036

Dear Chair Dahl and Special Counsel Lerner:

We write to ask the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) to coordinate with the Office of Special Counsel (OSC) to investigate allegations of wrongdoing and gross mismanagement by the Federal Housing Finance Agency (FHFA) Inspector General Laura Wertheimer. Our committees conducted five formal witness interviews in 2016 and we have received reports from numerous whistleblowers who allege that Inspector General Wertheimer:

- (1) hindered the audit mission of the Office of Inspector General (OIG);
- (2) failed to publish audit findings disfavored by agency leadership;
- (2) implemented a coercive "Voluntary Separation Program (VSP)";
- (3) abused the performance appraisal process;
- (4) used prohibited hiring practices;
- (5) expressed a desire to discriminate on the basis of age and gender; and
- (6) intimidated, harassed, and publicly embarrassed employees.

We understand that OSC is currently investigating some of these allegations. However, other related matters reported to the committees may not be within OSC's jurisdiction. Based on our witness interviews and document review, the whistleblowers' allegations appear credible and are quite concerning. Also, it seems that the productivity of the office's audit function has suffered as a result of Ms. Wertheimer's tenure.¹ The morale of a significant portion of its workforce has

¹ Federal Housing Finance Agency Office of Inspector General, <https://fhfaoig.gov/Reports/AuditsAndEvaluations>. Prior to Ms. Wertheimer's confirmation, the Office of Audit published 13 to 18 audit reports per year in 2012, 2013,

suffered as a result of the perception that there is a lack of accountability for the Inspector General.

Accordingly, to ensure that each allegation of wrongdoing is thoroughly and independently addressed, we ask the Integrity Committee to coordinate closely with OSC to initiate concurrent, parallel investigations of the matters within each of your jurisdictions. Failure to fully coordinate can lead to an unnecessarily lengthy investigative period, preventing a timely resolution of the allegations, as occurred with the Inspector General of the National Archives and Records Administration.²

Whistleblowers allege Inspector General Wertheimer gutted the FHFA-OIG audit function.

Whistleblowers reported to our committees that Ms. Wertheimer has hindered the FHFA-OIG's audit mission by reducing the Office of Audit from 36 to 9 full-time employees,³ and hiring employees in their places with limited auditing experience and without the necessary education and credentials to conduct or supervise government audits.

To downsize the Office of Audit, Ms. Wertheimer implemented an allegedly coercive VSP without seeking authorization from the Office of Personnel Management (OPM).⁴ Reportedly, Ms. Wertheimer and her senior staff used the VSP to force out audit employees by threatening them with negative performance appraisals if they refused to accept the buy-out offer. According to whistleblowers, Ms. Wertheimer modified the performance appraisal metrics in the middle of a review period so that it became impossible for auditors to receive positive evaluations. This caused numerous audit employees to take the buyout rather than risk a negative evaluation that would be detrimental to their careers. The VSP cost a total of \$1,155,105.68—6 months' salary for 16 employees, regardless of whether and when the employees obtained new employment.⁵

Moreover, by Ms. Wertheimer's own admission, she used the VSP for purposes that conflict with OPM's guidance that VSPs are intended to reduce employees who are in surplus

and 2014. Following Ms. Wertheimer's confirmation, in 2015 the office published 3 audit reports and 3 reports from the newly created "Office of Compliance."

² Lisa Rein, *Embattled National Archives IG To Retire After Probe Finds Misconduct*, THE WASHINGTON POST (Aug. 4, 2014).

³ Letter from Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, at 2 (Oct. 29, 2015).

⁴ FHFA-OIG claims its authority to conduct buyouts is not governed by OPM and rests under the "[e]nabling statutes for a number of independent financial regulators." Letter from Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, and Hon. Ron Johnson, Chairman, Senate Homeland Security and Governmental Affairs Committee (July 1, 2016).

⁵ Letter from Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, at 5 & n.7 (Oct. 29, 2015) (specifying that employees who did not obtain new employment were also paid their annual leave balances, necessarily implying that even employees who obtained new employment within six months of separation received the full buy-out).

positions, or who have skills that are no longer needed in the workforce. Ms. Wertheimer intended to refill at least some of the “eliminated” positions within the Office of Audit.⁶ She wrote to our committees that once she completes her planned reorganization, the Office of Audit will be expanded to have 18 to 20 full-time employees.⁷ According to a whistleblower, Ms. Wertheimer has hired 9 auditors since August 2016.

In addition to reducing the size of the Office of Audit, Ms. Wertheimer decreased the office’s output. According to whistleblowers, Ms. Wertheimer cancelled ongoing or nearly-completed audits, including one completed audit with findings that was sent to the agency for comment but ultimately never published because the agency head did not like the report’s findings. Apparently, the report found that FHFA failed to diligently review implementation proposals for the 97% loan-to-value program and, therefore, failed to accurately assess the amount of risk Fannie Mae and Freddie Mac assumed by implementing the program.⁸ If true, Ms. Wertheimer’s actions suggest, at minimum, a lack of independence required for an effective Inspector General.

Whistleblowers allege Inspector General Wertheimer committed prohibited personnel practices.

According to whistleblowers, Ms. Wertheimer deliberately circumvented veterans’ preference hiring requirements. Ms. Wertheimer allegedly held a meeting in November 2014 to discuss strategies for avoiding veterans’ preference. She allegedly filled multiple positions with her own desired candidates by using noncompetitive hiring processes, including not posting vacancy announcements.

Whistleblowers also reported to our committees that Ms. Wertheimer has stated her discriminatory intent against employees on the basis of race, gender, age, and disability. She allegedly harassed and demeaned older, male employees. One whistleblower explained that Ms. Wertheimer created a “fear-oriented environment,” in which she identified “favorites” in the office and spoke about her contempt for specific individuals in the office and her desire for them to leave. She reportedly demoted and taunted an employee because of the employee’s mental illness, despite the employee’s proven track record of competence and reliability. She reportedly used unprofessional, abusive language on multiple occasions. She allegedly commented on an employee’s weight and medical condition in front of other employees. On another occasion, she allegedly berated an employee until the employee cried in her office, then subsequently boasted and laughed about making the employee cry.

⁶ See Letter from Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, to Hon. Charles E. Grassley, Chairman, Senate Judiciary Committee, at 3 (Oct. 29, 2015).

⁷ *Id.*

⁸ Whistleblowers dispute the FHFA-OIG’s claims that the report contained factual inaccuracies and did not contain sufficient citations to supporting sources. See Letter from Leonard J. DePasquale, Chief Counsel, FHFA-OIG, to Investigative Counsel, Senate Homeland Security and Governmental Affairs Committee (May 20, 2016).

The FHFA-OIG has wasted significant resources as a consequence of Ms. Wertheimer's mismanagement of the office. The FHFA-OIG spent more than \$300,000 to settle one employee's administrative personnel action, including paying \$200,000 to relocate the employee to another state.⁹ The FHFA-OIG also paid that employee more than \$250,000 while on administrative leave for 14 months, pending an internal "misconduct" investigation that failed to identify any misconduct.¹⁰ The FHFA-OIG also allegedly budgeted \$500,000 for private counsel to assist with matters related to the above-referenced administrative personnel action, our committees' inquiries, and other proceedings already initiated by the Integrity Committee of CIGIE and OSC.

The FHFA-OIG retained two private counsels, billing at \$400 and between \$775 and \$850 per hour, respectively¹¹—and refused to explain the legal authority that justified hiring private counsels rather than using the lawyers in its own office of General Counsel. Nor did it explain the process by which FHFA-OIG arrived at the decision to do so.¹² Federal agencies are authorized to hire outside counsel in certain circumstances, but because of the resources already dedicated to in-house legal advice, government agencies should generally obtain most of the legal services they need from government attorneys, and should only engage outside counsel when clearly authorized and necessary.¹³ Moreover, it is not uncommon for an Inspector General to supplement in-house legal advice through a cooperative agreement with another, larger Inspector General's office in order to avoid expensive outside counsel. However, the FHFA-OIG failed to pursue that option.

Additionally, we have learned that OSC has initiated investigations into whistleblower retaliation, other prohibited personnel practices, and the VSP.¹⁴ In order to obtain a better understanding of CIGIE and OSC's respective investigations, we request the following:

1. Confirmation that the Integrity Committee of CIGIE will promptly and fully coordinate with OSC to initiate concurrent investigations into matters within the Integrity Committee's jurisdiction to ensure a timely resolution of all the related allegations.

⁹ W. Heath Wolfe v. Federal Housing Finance Agency, Docket # DC-0752-16-0674-I-1, Agency Motion to Accept Settlement into Record & Dismiss Appeal as Settled (July 21, 2016); Relocation Authorization, William H. Wolfe.

¹⁰ W. Heath Wolfe v. Federal Housing Finance Agency, Docket # DC-0752-16-0674-I-1, Agency Motion to Accept Settlement into Record & Dismiss Appeal as Settled (July 21, 2016).

¹¹ Letter from Leonard J. DePasquale, Chief Counsel, FHFA-OIG, to Senate Homeland Security and Governmental Affairs Committee, Senate Judiciary Committee, at 1 n.2 (May 31, 2016).

¹² *Id.*

¹³ *See, e.g.*, 5 U.S.C. § 3106 (providing that agencies should refer litigation matters to the Department of Justice unless otherwise authorized by law); *see also* Agency Hiring of Private Attorneys, 52 Fed. Reg. 23,632 (June 24, 1987).

¹⁴ The committees have reviewed the Pension Benefit Guaranty Corporation OIG's (PBGC-OIG) peer review of the FHFA-OIG and the accompanying letter of comment which includes additional findings. The peer review and letter of comment, while helpful, do not cover all of the issues that whistleblowers have reported to the committees. *See* Letter from Hon. Robert A. Westbrook, Inspector General, PBGC-OIG, to Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, External Peer Review Report (Feb. 28, 2017); Letter from Hon. Robert A. Westbrook, Inspector General, PBGC-OIG, to Hon. Laura S. Wertheimer, Inspector General, FHFA-OIG, External Peer Review Letter of Comment (Feb. 28, 2017).

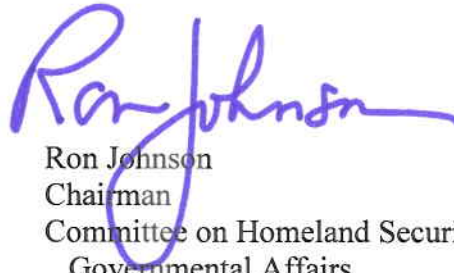
2. A briefing from the Integrity Committee and OSC to inform the committees of the investigations initiated related to the FHFA-OIG, including a plan and estimated timeline to complete each investigation.

Please provide your response and schedule a briefing by April 18, 2017. If you have any questions, please contact Samantha Brennan of Chairman Grassley's staff at (202) 224-5225, or Michael Lueptow of Chairman Johnson's staff at (202) 224-4751. Thank you for your cooperation.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs

cc: The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary Committee

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs

The Honorable Don McGahn
White House Counsel

The Honorable Michael E. Horowitz
Chair
Council of the Inspectors General on Integrity and Efficiency
Inspector General of the U.S. Department of Justice