

United States Senate

WASHINGTON, DC 20510

May 17, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Laura S. Wertheimer
Inspector General
Federal Housing Finance Agency
400 Seventh Street, SW
Washington, DC 20024

Dear Inspector General Wertheimer:

As you know, the Homeland Security and Governmental Affairs Committee and the Judiciary Committee have been inquiring into various issues regarding the Federal Housing Finance Agency Office of Inspector General (FHFA-OIG). In the course of that inquiry, it has come to the Committees' attention that your office is the subject of one or more complaints before the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) and the Office of Special Counsel (OSC). It has also come to the Committees' attention that your office has retained one or more private attorneys in some capacity, perhaps in connection with these proceedings or the Committees' inquiry. Government agencies should generally obtain most of the legal services they need from government attorneys—whether from in-house attorneys or attorneys from another agency.¹ For example, Inspectors General may consult with and obtain advice from other counsel within the Inspector General community without incurring the added expense of private counsel.

In certain circumstances, where the proper authority exists, agencies may hire outside counsel. However, given the added expense and the substantial resources already devoted to paying for in-house legal advice, outside counsel should only be engaged when clearly authorized and necessary. In order to better understand the nature and circumstances of legal representation procured for or by FHFA-OIG, please provide responses to the following questions:

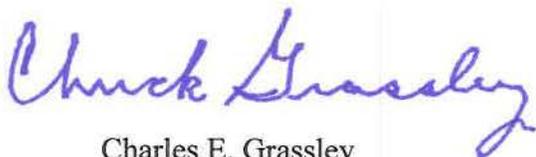
1. Has FHFA-OIG retained any private attorney(s)? If so, please provide a copy of all retainer agreements, including the hourly rate of pay.
2. For each attorney hired:
 - a. whom precisely does the attorney represent?
 - b. for what purpose was each attorney retained?
 - c. what is the scope of the representation?
 - d. how much has been paid to each attorney to date?

¹ 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).

3. Please describe the legal authority for FHFA-OIG to hire a private attorney for the purposes described in your answer to question number 2.
4. According to FHFA-OIG's 2015 Congressional Budget Justification, the FHFA-OIG Office of Counsel serves as the chief legal advisor to the Inspector General and provides independent legal advice, counsel, and opinions to FHFA-OIG about, among other things, its programs and operations. Why was the FHFA-OIG Office of Counsel deemed insufficient to provide representation in this instance?
5. Prior to hiring outside counsel, did FHFA-OIG explore the possibility of using the expertise found at other agencies of the government on a temporary or short-term basis?
6. Please describe the efforts made to determine whether the proposed employment of outside counsel would be cost-effective, including the analysis performed and the outcome of that analysis.
7. What procedures were used to ensure that the hiring of any private attorney was competitive and designed in a manner to reduce the prospect or appearance of favoritism and result in a higher quality legal service and savings in cost?
8. What efforts were made to identify conflicts or potential conflicts and how are those conflicts being managed?
9. The Administrative Conference of the United States has recommended that any agency that anticipates a need to hire private attorneys should prepare written public guidelines concerning when and how it will seek outside counsel and that agencies should prepare an annual report listing basic information relating to legal service contracts awarded.² Has FHFA-OIG completed these actions? If so, please provide a copy and indicate where they have been made public. If not, please explain why not.

Please provide your responses to these questions no later than May 31, 2016. Should you have any questions, please contact Paul Junge 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 in this important matter.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

² Agency Hiring of Private Attorneys, 52 Fed. Reg. 23,632 (June 24, 1987).

cc:

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security
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The Honorable Michael E. Horowitz
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