



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

The Honorable Jason Miller
Executive Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street NW, Suite 825
Washington, D.C. 20006

Report of Findings for Integrity Committee Case 971

Dear Executive Chairperson Miller:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards its findings and recommendation regarding former IG Laura Wertheimer, former Chief Counsel Leonard DePasquale, and Acting Deputy IG for Investigations Richard Parker, Federal Housing Finance Agency Office of Inspector General.

The IC also provided its findings and recommendation to the President, the CIGIE Chairperson, the subjects, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

Ms. Allison Lerner
Chairperson
Council of the Inspectors General on Integrity and Efficiency
1717 H Street, N.W., Suite 825
Washington, D.C. 20006

Report of Findings for Integrity Committee Case 971

Dear Chairperson Lerner:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards its findings and recommendation regarding former IG Laura Wertheimer, former Chief Counsel Leonard DePasquale, and Acting Deputy IG for Investigations Richard Parker, Federal Housing Finance Agency Office of Inspector General.

The IC also provided its findings and recommendation to the President, the CIGIE Executive Chairperson, the subjects, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510-6250

The Honorable Rob Portman
Ranking Member
Committee on Homeland Security and
Government Affairs

The Honorable Carolyn Maloney
Chairwoman
Committee on Oversight and Government
Reform
2517 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable James Comer
Ranking Member
Committee on Oversight and
Government Reform

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing, and
Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510-6250

The Honorable Pat Toomey
Ranking Member
Committee on Banking, Housing, and
Urban Affairs

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515-6143

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services

Report of Findings for Integrity Committee Case 971

Dear Chairpersons and Ranking Members:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG

Act), the IC hereby forwards its findings and recommendations regarding former IG Laura Wertheimer, former Chief Counsel (CC) Leonard DePasquale, and Acting Deputy IG for Investigations (DIG) Richard Parker, Federal Housing Finance Agency (FHFA) Office of Inspector General.

After thoroughly reviewing the report of investigation and supporting evidence, the IC determined by a preponderance of the evidence that IG Wertheimer abused her authority in the exercise of her official duties and engaged in substantial misconduct when she wrongfully disclosed to the FHFA Director the identity of an FHFA whistleblower without the whistleblower's consent. The IC also determined by a preponderance of the evidence that DIG Parker abused his authority in the exercise of his official duties when he repeatedly and improperly denied lawful IC requests for access to government information. The IC did not substantiate an allegation of wrongdoing against CC DePasquale.

The IC provided its findings and recommendation to the President, the CIGIE Executive Chairperson, the CIGIE Chairperson, and the subjects, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,



Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

Via Email

Honorable Brian M. Tomney
Inspector General
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, S.W., Suite 3.201
Washington, D.C. 20219

Report of Findings for Integrity Committee Case 971

Dear Mr. Tomney:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General. Pursuant to section 11(d)(8)(A) of the Inspector General Act of 1978, as amended (IG Act), the IC hereby forwards its findings regarding former Federal Housing Finance Agency Office of Inspector General (FHFA OIG) personnel IG Laura Wertheimer and former Chief Counsel Leonard DePasquale. In addition, the IC provides a finding and recommendation for Acting Deputy IG for Investigations Richard Parker, FHFA OIG.

The IC also provided its findings and recommendation to the President, the CIGIE Executive Chairperson, the CIGIE Chairperson, the subjects, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

Via Email

Ms. Laura Wertheimer
former Inspector General
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, S.W., Suite 3.201
Washington, D.C. 20219

Through

Mr. Emmet T. Flood
Partner
Williams & Connolly LLP
680 Maine Avenue SW
Washington, DC 20024

(b) (6), (b) (7)(C)

Report of Findings for Integrity Committee Case 971

Dear Ms. Wertheimer:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On October 18, 2019, the IC initiated an investigation into allegations against you and engaged the U.S. Department of Health and Human Services OIG to conduct the investigation. After thoroughly reviewing the evidence and your comments, the IC determined by a preponderance of the evidence that you abused your authority in the exercise of your official duties and engaged in substantial misconduct when you wrongfully disclosed to the FHFA Director the identity of an FHFA whistleblower without their consent.

The IC provided the enclosed findings and recommendation to the President, the appropriate Congressional committees of jurisdiction, the CIGIE Executive Chairperson, and the CIGIE Chairperson, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

Via Email

Mr. Richard Parker
Acting Deputy Inspector General
for Investigations
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, S.W., Suite 3.201
Washington, D.C. 20219

Through

(b) (6), (b) (7)(C)

Report of Findings for Integrity Committee Case 971

Dear Mr. Parker:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On August 31, 2020, the IC initiated an investigation into allegations against you and engaged the U.S. Department of Health and Human Services OIG to conduct the investigation. After thoroughly reviewing the evidence and your comments, the IC finds by a preponderance of the evidence that you abused your authority in the exercise of your official duties when you repeatedly and improperly denied lawful IC requests for access to government information pertaining to the IC's investigation in IC 971.

The IC provided the enclosed findings and recommendation to the President, the appropriate Congressional committees of jurisdiction, the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Federal Housing Finance Agency IG as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

Via Email

Mr. Leonard DePasquale
former Counsel to the Inspector General
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, S.W., Suite 3.201
Washington, D.C. 20219

Through

(b) (6), (b) (7)(C)

Report of Findings for Integrity Committee Case 971

Dear Mr. DePasquale:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged by statute to review and investigate allegations of misconduct made against an Inspector General (IG) or a designated official within an Office of Inspector General (OIG).

On May 20, 2019, the IC initiated an investigation into allegations against you and engaged the U.S. Department of Health and Human Services OIG to conduct the investigation. After thoroughly reviewing the evidence and your comments, the IC did not substantiate the allegations of wrongdoing against you.

IC 971

September 22, 2022

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The IC provided the enclosed findings and recommendation to the President, the appropriate Congressional committees of jurisdiction, the CIGIE Executive Chairperson, and the CIGIE Chairperson, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosure



**COUNCIL OF THE INSPECTORS GENERAL
ON INTEGRITY AND EFFICIENCY**
INTEGRITY COMMITTEE

September 22, 2022

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Report of Findings for Integrity Committee Case 971

Dear Mr. President:

This letter sets forth the findings, conclusions, and recommendations of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) regarding allegations of misconduct against former Inspector General (IG) Laura Wertheimer, former Chief Counsel (CC) Leonard DePasquale, and Acting Deputy IG for Investigations (DIG) Richard Parker, Federal Housing Finance Agency (FHFA) Office of Inspector General (OIG). Pursuant to the Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), the IC is referring this matter to you for appropriate action.¹

This report finds by a preponderance of the evidence that IG Wertheimer abused her authority in the exercise of her official duties and engaged in substantial misconduct.² Contrary to well-established standards for IGs, IG Wertheimer wrongfully disclosed to the FHFA Director the identity of an FHFA whistleblower who had filed a complaint with the OIG and unequivocally requested that her identity be kept confidential and never waived that request. Further, the IC finds by a preponderance of the evidence that DIG Parker abused his authority in the exercise of his official duties when he wrongfully impeded the IC's investigation. Due in part to the lack of cooperation by DIG Parker, the IC was unable to make a determination on the allegation of wrongdoing against CC DePasquale.

This is the second IC investigation into allegations of wrongdoing by IG Wertheimer, DIG Parker, and CC DePasquale. The IC previously substantiated findings that, in part, IG Wertheimer

¹ In the case of a report relating to an IG of an establishment or any employee of that IG, section 11(d)(8)(A)(ii) of the IG Act requires the IC to refer its investigative findings to the President. However, under the IG Act, an IG or Acting IG, as appropriate, has the sole authority to make personnel decisions regarding subordinate OIG employees, such as CC DePasquale and DIG Parker.

² "Abuse of authority" means an arbitrary or capricious exercise of power by a federal official or employee that adversely affects the rights of any person or that results in personal gain or advantage to her/him or to preferred other persons. Integrity Committee Policies and Procedures (ICP&P) (2018), Appendix A. "Substantial misconduct" includes gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation. ICP&P (2018), Section 7.A.

wrongfully disparaged and demeaned FHFA OIG whistleblowers whom she believed complained to Congress or cooperated with a Congressional inquiry (IC Case 912).³ That matter was referred to you on April 14, 2021, for such action as you deemed appropriate, and IG Wertheimer resigned on June 29, 2021. CC DePasquale resigned on January 31, 2022. The resolution of possible disciplinary action for DIG Parker arising from that matter remains pending with FHFA OIG. Given that IG Wertheimer is no longer employed in the Federal Government, this report makes no recommendations regarding disciplinary action against her pertaining to the instant matter. The IC does, however, recommend appropriate disciplinary action for DIG Parker as addressed below.

A synopsis of the allegations and the IC's findings and recommendations in this matter are provided below. The detailed Report of Investigation (ROI) and the subjects' responses are also attached.

IC Jurisdiction and Case History

Congress designated the IC, which is composed of four IGs, a representative from the Federal Bureau of Investigation, and a representative from the Office of Government Ethics, to be the independent mechanism that ensures senior officials in the IG community “perform their duties with integrity and apply the same standards of conduct and accountability to themselves as they apply to the agencies that they audit and investigate.”⁴ Accordingly, the IG Act requires the IC to receive, review, and, as appropriate, investigate allegations of wrongdoing made against an IG or a designated staff member within an OIG.⁵

As noted above, the IC previously investigated, in part, allegations that IG Wertheimer wrongfully disparaged and demeaned FHFA OIG staff members—whistleblowers—whom she believed made complaints that led to a Congressional inquiry or cooperated with such inquiry. It was during the IC's investigation of that matter that another whistleblower, this one from the FHFA, contacted the IC and alleged that IG Wertheimer and CC DePasquale had inappropriately disclosed—to FHFA officials—her identity and details about a complaint that she had made in confidence to the OIG.⁶

³ After thoroughly reviewing the evidence, the IC determined that IG Wertheimer showed a disdain and resistance towards Congressional and IC oversight by fostering a culture of witness intimidation through a pattern of staff abuse and fear of retaliation. Furthermore, she wrongfully refused to cooperate with the IC's investigation by denying IC investigators full access to FHFA OIG personnel and documents. The IC also found that CC DePasquale and DIG Parker abused their authority and were fully complicit in IG Wertheimer's refusal to cooperate, by repeatedly and improperly denying the IC access to documents and a key witness, who was CC DePasquale himself. In fact, CC DePasquale, a government employee, simply refused to be interviewed by IC investigators in that matter. While CC DePasquale and DIG Parker were not originally listed as subjects in IC Case 912, the IC determined the record contained sufficient evidence to support findings of wrongdoing against them without additional investigation.

⁴ U.S. House Committee on Oversight and Government Reform, *Improving Government Accountability Act*, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

⁵ IG Act, section 11(d)(1). The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons. ICP&P (2018), section 7.A.

⁶ The whistleblower is not identified by name in this report because, consistent with her not consenting to release of her identity by the FHFA OIG as discussed herein, the whistleblower also did not consent to the disclosure of her identity in the IC's report in this matter. Moreover, while the whistleblower is identified as “her” in this report for

Given that the bulk of the investigative work for the previous investigation was substantially complete, the IC determined it was more efficient to initiate a new investigation with the assistance of the U.S. Department of Health and Human Services (HHS) OIG (IC investigators).⁷ Specifically, the IC investigators were asked to determine:

1. Whether IG Wertheimer violated section 7(b) of the IG Act when she disclosed a whistleblower's identity and details about the whistleblower's confidential complaint to senior agency officials without the whistleblower's consent.⁸
2. Whether CC DePasquale abused his authority and engaged in conduct that undermined the independence and integrity reasonably expected of his position when he disclosed a whistleblower's identity and details about the whistleblower's confidential complaint to senior agency officials without the whistleblower's consent.⁹¹⁰
3. Whether, on (b) (6), (b) (7)(C), IG Wertheimer engaged in conduct undermining the independence and integrity reasonably expected of an IG by omitting from her testimony to Congress the material fact that CC DePasquale had disclosed the whistleblower's identity, without the whistleblower's consent, to FHFA's (b) (6), (b) (7)(C) two weeks prior to IG Wertheimer's disclosure of the whistleblower's identity to the FHFA Director.¹¹

On August 31, 2020, the IC expanded the scope of its investigation and asked IC investigators to determine whether DIG Parker's repeated refusal to respond to all IC requests for access to relevant documents and witnesses related to the allegations above constituted an abuse of his authority.¹²

ease of reference, the IC is not confirming the whistleblower's gender.

⁷ Pursuant to the IG Act and the ICP&P (2018), and in the absence of its own investigators, the IC secures uninvolved OIGs to serve as its investigators. The Federal Deposit Insurance Corporation OIG served as the IC investigators in the previous investigation, IC Case 912.

⁸ Section 7(b) of the IG Act states the IG "shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee" without their consent, unless the IG determines it is "unavoidable during the course of the investigation."

⁹ "Confidential complaint" in this context means that the whistleblower specifically requested that the OIG preserve her confidentiality.

¹⁰ On February 17, 2022, the IC notified CC DePasquale that it was considering making a separate finding of wrongdoing against him: specifically, that he engaged in conduct undermining the integrity reasonably expected of his position when he refused to cooperate with the IC's investigation. Upon further review, the IC determined this did not constitute sufficient notification to warrant additional investigative activity; therefore, no findings were made with regard to this issue.

¹¹ The IC first requested IG Wertheimer and CC DePasquale respond to the allegations. After receiving and reviewing their responses, the IC determined to refer the allegation against CC DePasquale to the IC Chairperson for investigation. Enclosure (Encl.) 1 (ROI), Exhibit (Ex.) 1. The IC later expanded the scope of the investigation to include the allegations of wrongdoing against IG Wertheimer. Encl. 1, Ex. 3.

¹² Encl. 1 at 2.

At the conclusion of their fieldwork, the IC investigators provided their draft ROI to the IC on August 24, 2021. The IC investigators determined by a preponderance of the evidence that IG Wertheimer violated the IG Act by disclosing to senior agency officials a whistleblower's identity and details about the whistleblower's confidential complaint without the whistleblower's consent, and that DIG Parker wrongfully impeded the IC's investigation.¹³ Due in part to the lack of cooperation from DIG Parker and the FHFA OIG, IC investigators could not make a finding on the allegation that CC DePasquale also disclosed the whistleblower's identity to senior agency officials without the whistleblower's consent.¹⁴ Finally, IC investigators did not substantiate the allegation that IG Wertheimer wrongfully omitted information from her testimony to Congress.¹⁵

On February 17, 2022, in accordance with section 11(d) of the IG Act, the IC provided the subjects the opportunity to respond to the draft ROI before the IC made its findings and conclusions. Their responses, the last of which was received by the IC on April 14, 2022, are enclosed.¹⁶

Investigative Findings and Analysis

After thoroughly reviewing the evidence and the subjects' comments, the IC finds by a preponderance of the evidence that IG Wertheimer abused her authority and engaged in substantial misconduct by revealing—to FHFA's top official—that a FHFA whistleblower had complained to the FHFA OIG, the identity of that whistleblower, and the details of the whistleblower's complaint. Further, the IC finds DIG Parker abused his authority in the exercise of his official duties by not cooperating with the IC. The IC agrees with the IC investigators' findings that there was insufficient evidence to support a finding of substantial misconduct pertaining to CC DePasquale.

I. Abuse of Authority and Substantial Misconduct: IG Wertheimer wrongfully disclosed a whistleblower's identity without the whistleblower's consent.

A. IG Wertheimer Disclosure of an FHFA Whistleblower's Identity to the FHFA Director

Government employees who report information to oversight bodies play an important role in helping to identify and assist their agencies in addressing wrongdoing, such as fraud, waste, and abuse. It is for this reason that Congress has passed numerous laws, including the Whistleblower Protection Act of 1989, which was later expanded by the Whistleblower Protection Enhancement Act of 2012, to establish clear rules for ensuring witnesses can come forward without fear of reprisal. OIGs play an important role in this process. Through various means such as websites, posters, town halls, briefings, business cards, and other forms of outreach, OIGs advertise and encourage whistleblowers to come forward when they reasonably believe they have evidence of a possible violation of law, rule, or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to the public health and safety. The IG Act protects the individuals who perform

¹³ Encl. 1 at 3, 31.

¹⁴ Encl. 1 at 2.

¹⁵ Encl. 1 at 3.

¹⁶ Pursuant to the ICP&P (2018), on February 17, 2022, the IC provided the redacted draft ROI to the subjects with a deadline of March 3, 2022, for any comments. On February 25, 2022, the IC Chairperson approved the subjects' request for an extension, with a new deadline of April 14, 2022. The IC received IG Wertheimer's comments on April 11, 2022. The IC received DIG Parker and CC DePasquale's comments on April 14, 2022. Encls. 2-4.

this important service to their agencies and the public by requiring OIGs to protect the confidentiality of such disclosures.¹⁷

Under the IG Act, employees who come forward to disclose information to OIGs do not have to request confidentiality – it is automatic.¹⁸ But many OIGs, such as FHFA OIG, specifically ask the whistleblowers if they wish to have their identities remain confidential, to which, in this case, the whistleblower responded in the affirmative. Also, there is no requirement under the law for a whistleblower to tell the OIG *why* they wish to have their identity remain confidential and thereby protected from disclosure; the law inherently assumes there are myriad reasons, to include a real or perceived risk of retaliation. The importance of this point is underscored by the fact that, under the IG Act, only an IG, and not OIG staff, may disclose a whistleblower’s identity without consent, and only then under extremely limited circumstances in which the IG determines that such disclosure is unavoidable during the course of the investigation.¹⁹

Courts have also recognized whistleblowers’ interests “in remaining anonymous both in the context of the [IG Act] and beyond.”²⁰ In *United America Financial, Inc. v. Potter*, the Court upheld redactions in emails “made to protect identity of USPS employees who provided information to the OIG,” reasoning the IG Act “provides that the Inspector General ‘shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee’ without that employee’s consent”²¹ In *Kloeckner v. Perez*, the court denied a motion to compel disclosure of the identity of an anonymous OIG whistleblower to a plaintiff because the “interest in protecting the anonymity of the OIG whistleblower outweighs whatever probative value [the plaintiff] believes would result from disclosure.”²²

¹⁷ IG Act, section 7(b). See also Whistleblower Protection Act of 1989, as amended by the Whistleblower Protection Enhancement Act of 2012, codified at 5 USC 2301 et seq.; and U.S. House Subcommittee on Government Operations, *Protecting Those Who Blow the Whistle on Government Wrongdoing* (January 28, 2020), <https://oversight.house.gov/legislation/hearings/protecting-those-who-blow-the-whistle-on-government-wrongdoing> (“Whistleblower disclosures promote an effective and efficient civil service and benefit the public interest by ‘assisting in the elimination of fraud, waste, abuse, and unnecessary Government expenditures.’”).

¹⁸ IG Act, section 7(b).

¹⁹ *Id.*

²⁰ *Iglesias v. United States Agency for International Development*, 2018 U.S. Dist. LEXIS 175806, at *22.

²¹ 667 F.Supp.2d 49, 61 (D.D.C. 2009) (citing section 7(b) of the IG Act). See also, *Accord, Am. Civil Liberties Union v. U.S. Dep’t of Homeland Sec.*, 738 F. Supp. 2d 93, 110 (D.D.C. 2010) (§ 7(b) of the IG Act “provid[es] for confidentiality of employee disclosures to the Inspector General.”); *Braun v. United States Postal Serv.*, 317 F. Supp. 3d 540, 548 (D.D.C. 2018), (“The Inspector General Act . . . provides that OIG, after receipt of a complaint from an employee, shall not disclose the identity of the employee without the consent of the employee.”); *McCutchen v. U.S. Department of Health and Human Services*, 30 F.3d 183, 189 (D.C. Cir. 1994) (allowing HHS “to withhold the names of the whistleblowers” based on their “strong privacy interest in remaining anonymous because, as ‘whistle-blowers,’ they might face retaliation if their identities were revealed.”); and *Iglesias v. United States Agency for International Development*, supra, at *18 (“[T]he ‘protection of the whistleblower’s identity is essential . . . to assure a free flow of information to the [Inspector General]’ and ‘it is expected [that] the disclosure of a whistleblower’s identity will be necessary only in the rarest of circumstances.’”).

²² 2014 U.S. Dist. LEXIS 138009, at *3 (E.D. Mo. Sept. 30, 2014).

Nevertheless, IG Wertheimer intentionally disclosed the identity of the FHFA whistleblower to the FHFA Director without the whistleblower's consent. Particularly troubling was the ample evidence suggesting why the whistleblower did not want her identity disclosed, particularly to the FHFA Director. The key facts relevant to the allegations against IG Wertheimer and CC DePasquale are as follows:

- On March 19, 2018, the whistleblower filed a complaint via the FHFA OIG Hotline alleging that FHFA officials, in summary, were perpetuating discrimination and that the FHFA failed to hold those responsible accountable. The whistleblower also alleged that the FHFA was generally failing to uphold its anti-harassment policies. The whistleblower unequivocally requested that the OIG keep her identity as the complainant anonymous.²³
- On March 27, 2018, the FHFA OIG notified the whistleblower that it had declined to investigate the whistleblower's complaint and referred the whistleblower to the FHFA Equal Employment Opportunity (EEO) Office.²⁴ On April 4, 2018, the whistleblower's attorney asked the FHFA OIG to "reconsider" its declination because the whistleblower indicated that the FHFA EEO Office had stated that the whistleblower could not pursue the EEO process unless she was able to specifically identify the alleged discriminator.²⁵
- On April 9, 2018, at a FHFA OIG senior staff meeting with IG Wertheimer present, "it was determined" (without consulting the whistleblower), that CC DePasquale would speak to the FHFA (b) (6), (b) (7)(C) about the FHFA EEO Office's refusal to take the whistleblower's complaint.²⁶
- On April 11, 2018, CC DePasquale met with the FHFA (b) (6), (b) (7)(C) and, according to CC DePasquale, advised him "that the FHFA needed to make sure that its EEO office addressed [the whistleblower's] EEO complaint fully and appropriately."²⁷ That same day, employees in the FHFA OIG Office of Investigations made the decision internally to reject the whistleblower's attorney's request to reconsider and closed the whistleblower's hotline complaint.²⁸
- On April 18, 2018, a week after CC DePasquale's meeting with (b) (6), (b) (7)(C), a FHFA OIG (b) (6), (b) (7)(C) emailed the whistleblower's attorney, stating the

²³ Encl. 1, Ex. 1a, page 180.

²⁴ Encl. 1, Ex. 1a, page 90.

²⁵ Encl. 1, Ex. 11.

²⁶ Encl. 1, Ex. 14 at 13-14 (IG Wertheimer's response to the IC: "it was determined that Mr. DePasquale would speak to FHFA's (b) (6), (b) (7)(C)") and Ex. 15 at 12-13 (CC DePasquale's response to the IC: "participants at that meeting determined that Chief Counsel DePasquale should speak to FHFA's (b) (6), (b) (7)(C)").

²⁷ Encl. 1, Ex. 1a, page 110-111. IG Wertheimer acknowledged that CC DePasquale subsequently reported this conversation to her, stating "he had advised (b) (6), (b) (7)(C) that FHFA's EEO office had improperly refused to accept an EEO complaint from [the whistleblower] and recommended that (b) (6), (b) (7)(C) take appropriate actions to ensure that her complaint was timely processed by FHFA's EEO office." Encl. 1, Ex. 15 at 12-16.

²⁸ Encl. 1, Ex. 15 at 2.

allegations of discriminatory harassment should be promptly and fully investigated by the FHFA EEO office. The OIG's (b) (6), (b) (7)(C) then asked the whistleblower's attorney, for the first time, if the whistleblower would "provide a written waiver of anonymity and confidentiality so [FHFA OIG may] speak with the necessary FHFA officials and urge them to proceed."²⁹

- (b) (6), (b) (7)(C) did not inform the whistleblower's attorney that CC DePasquale had already met with the Agency's (b) (6), (b) (7)(C) referenced the whistleblower, and requested that the Agency pursue its EEO process.³⁰ He also incorrectly stated the whistleblower's complaint remained open and under review at the FHFA OIG, despite records showing her complaint had been closed on April 11, 2018, and that no further work was undertaken after March 27, 2018, the date FHFA OIG initially had referred the whistleblower to the FHFA EEO.³¹
- The whistleblower received the request to waive anonymity, but did not respond, leaving her original request for anonymity in place. Notably, while she did not need any special reason for wanting to protect her identity, the whistleblower had good reason not to want her identity disclosed to FHFA officials - particularly to former Congressman Melvin Watt, the presidentially appointed, senate confirmed, FHFA Director. According to allegations she would later make, prior to and during the span of the events discussed here, FHFA Director Watt had engaged in serious misconduct directed at the whistleblower personally.
- On April 25, 2018, IG Wertheimer disclosed to FHFA Director Watt the fact that the whistleblower had complained to the OIG hotline, the identity of the whistleblower, and the substance of her hotline complaint. While IG Wertheimer was not aware of the whistleblower's allegations involving FHFA Director Watt's misconduct directed at the whistleblower personally, she was aware that the whistleblower had requested anonymity and that, despite a request for waiver made by the OIG, the whistleblower had not waived her original request. IG Wertheimer later explained, in pertinent part, that her motivation in making this disclosure was that she wanted the FHFA EEO to do its job.³²
- Thereafter, according to the whistleblower, her concerns about the consequences of becoming known to FHFA Director Watt as a whistleblower ultimately proved to be more than speculative.³³

²⁹ Encl. 1, Ex. 12.

³⁰ Encl. 1, Ex. 1a, page 91-92.

³¹ *Id.* See also, Encl. 1, Ex. 15 at 2-3.

³² IG Wertheimer asserted that, had she known the whistleblower had additional claims specifically against FHFA Director Watt, she would not have disclosed the whistleblower's identity. Encl. 1, Ex. 7 at 55.

³³ The whistleblower claims the OIG's nonconsensual disclosure to FHFA Director Watt became part of the continuing pattern of alleged misconduct directed at her. She asserts that on May 8, 2018, FHFA Director Watt called her and asked her about the status of her anonymous complaint to the OIG, further alleging that he had previously warned her "about the issue with anonymous complaints... which often victimizes those the law is designed to protect." Encl. 1, Ex. 10 at 48-49. On May 9, 2018, the whistleblower filed an informal EEO complaint,

B. IG Wertheimer's Assertion that the Disclosure was "Authorized" is Not Persuasive

IG Wertheimer concedes that she revealed the whistleblower's identity to FHFA Director Watt, but asserts her disclosure was authorized.³⁴ IG Wertheimer states her disclosure to FHFA Director Watt was "appropriate" because the whistleblower's claims were "at risk for being time-barred" and the whistleblower had already "disclosed both [his/her] identity and [his/her] Title VII claims to FHFA senior officials in early April 2018, on [his/her] own initiative, before FHFA-OIG communicated any information to anyone at FHFA."³⁵

IG Wertheimer further argues that even if the whistleblower had some anonymity to protect, her limited disclosure of information, including the whistleblower's identity, was authorized by the IG Act. IG Wertheimer claims the statutory provisions on which the IC relies only involve the protection of anonymous whistleblowers and the IG Act vests each IG with discretion to determine whether disclosure of an employee's identity is "unavoidable" during an investigation.

Finally, IG Wertheimer asserts she did not engage in wrongdoing by claiming that she relied on the legal advice given to her by CC DePasquale when she disclosed the whistleblower's identity to FHFA Director Watt. For reasons set forth below, the IC disagrees.

1) *IG Wertheimer wrongfully disregarded the IG Act's requirements by disclosing the whistleblower's identity*

IG Wertheimer argues the whistleblower waived her right to anonymity, and that the IG Act vests each IG with discretion to determine whether disclosure of an employee's identity is "unavoidable during the course of the investigation." For the latter point, IG Wertheimer states that she made that determination, and that the IC has no authority to second-guess her decision.

The fact that a whistleblower makes a similar complaint to another agency branch – such as its EEO

which included a host of allegations against the Agency and FHFA Director Watt, spanning over two years, as well as allegations that FHFA and its OIG were not independent. Given that the whistleblower's allegations included claims that involved both the Agency and its OIG, FHFA arranged for an external entity to investigate the matter. Ultimately, the EEO case was settled between the whistleblower and the FHFA (b) (6), (b) (7)(C). Encl. 1, Ex. 8.

³⁴ Encl. 1, Ex. 7 at 50.

³⁵ Encl. 1, Ex. 15, page 12. To support her position, IG Wertheimer points to 29 CFR 1614.106(c), which states, "Complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved individual..." However, this provision only applies when an employee files a formal complaint of discrimination. Prior to that point, an employee's identity shall not be revealed unless authorized by that employee or until the agency has received a formal discrimination complaint. 29 CFR 1614.105(g). In this case, the whistleblower did not file a formal EEO complaint until May 30, 2018, over a month after IG Wertheimer had already revealed the whistleblower's identity to FHFA Director Watt. Moreover, there is no evidence to support IG Wertheimer's claim that the whistleblower's discrimination claims were in danger of being time-barred under the law. Pursuant to 29 CFR 1614.105, the agency *shall* extend the 45-day time limit when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have been known that the discriminatory matter or personnel action occurred, *that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits*, or for other reasons considered sufficient by the agency (emphasis added).

– does not relieve the OIG of its obligation to protect the whistleblower’s complaint and identity. Vastly different equities are implicated and at stake when an employee comes to its OIG, and protection of those confidential communications are of paramount importance in encouraging people to come forward. Consequently, the IG Act’s protections logically and unambiguously reside with individuals who complain to the OIG and do not consent to having their identity revealed. So too in this case, where the whistleblower had every right to believe her complaint to the OIG would remain confidential—regardless of her communications with the EEO. Furthermore, the whistleblower’s confidentiality request was explicit, and she further declined the OIG’s request to waive it.

IG Wertheimer’s argument that the disclosure was nonetheless “unavoidable,” and thus permitted under the IG Act, is similarly flawed. The IG Act strictly prohibits the OIG’s disclosure of the identity of an agency employee who files a complaint with the OIG, without their consent, unless the IG determines it is “unavoidable during the course of the investigation.”³⁶ When IG Wertheimer disclosed the whistleblower’s identity to FHFA Director Watt on April 25, 2018, however, no OIG or EEO investigation of the whistleblower’s complaint was underway. IG Wertheimer states when she met with FHFA Director Watt, she told him: “We have gotten a complaint, that complaint is from [the whistleblower] who previously made it to the EEO office which rejected it and frankly, sir, you need to do your job and tell the EEO office [to process it].”³⁷ Not only does IG Wertheimer’s statement demonstrate she knew there was no investigation pending, FHFA Director Watt does not corroborate IG Wertheimer’s justification for her disclosure of the whistleblower’s identity, stating that IG Wertheimer notified him of the whistleblower’s identity and anonymous complaint only for “informational purposes.”³⁸

Regardless of IG Wertheimer’s possible intentions, three key findings emerge from the record. First, that IG Wertheimer disclosed the whistleblower’s complaint to FHFA Director Watt, a fact that is corroborated by both participants in that conversation. Second, that she did this despite knowing the whistleblower had requested that her confidentiality be preserved and that her office had asked for the whistleblower’s consent to waive that confidentiality, which had not been given.³⁹ And third, that IG Wertheimer’s claim that disclosing the whistleblower’s name and complaint was “unavoidable during the course of the investigation” is not supported by the undisputed chronology, as there simply was no OIG or EEO investigation at that time.⁴⁰

³⁶ IG Act, section 7(b).

³⁷ Encl. 1, Ex. 7 at 36-37.

³⁸ Encl. 1, Ex. 21.

³⁹ Encl. 1, Ex. 7 at 47-48.

⁴⁰ Section 7(a) of the IG Act establishes that the IG “may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.” Section 7(b) of the IG Act strictly prohibits the IG’s disclosure of the identity of an agency employee who files a complaint with the OIG without their consent, unless the IG determines it is “unavoidable during the course of the investigation.” Additionally, section 8M(b)(2)(B) of the IG Act prohibits IG’s disclosure of the identity of *any* individual who files a complaint with the OIG Hotline without their consent, unless the IG determines it is “unavoidable during the course of the investigation.” As noted above, the whistleblower never provided consent and IG Wertheimer’s disclosure of the whistleblower’s identity did not fall within the “investigation” exceptions to sections 7(b) and 8M(b)(2)(B) of the IG Act.

2) *IG Wertheimer's misplaced claims of following the "advice of counsel."*

IG Wertheimer also attempts to divert responsibility for the decision to disclose the whistleblower's identity to CC DePasquale, a person who is now unavailable to the IC, as he has resigned from the agency. She claims that CC DePasquale's advice was central to her disclosure to FHFA Director Watt, as CC DePasquale allegedly advised her that the whistleblower was no longer anonymous; that disclosure of the whistleblower's identity was, in any event, unavoidable; and that IG Wertheimer had a "legal duty" to notify FHFA Director Watt.⁴¹

The IC has significant doubts regarding IG Wertheimer's "advice of counsel" claim, which she now makes over three years after the fact. As an initial matter, there is no contemporaneous evidence in the record to support that such advice was given; in fact, at the time it purportedly occurred, the OIG's Office of Counsel had requested consent from the whistleblower, which is inconsistent with IG Wertheimer's current claim that CC DePasquale did not believe such consent was necessary or that he would have advised her accordingly. IG Wertheimer is also asserting this defense at a time when CC DePasquale is no longer available or willing to speak to the IC to discuss what transpired. Moreover, IG Wertheimer, an experienced attorney as detailed below, did not clearly raise an advice of counsel claim in a manner or time in which she would reasonably have been expected to do so had such advice actually been given.⁴² As a seasoned attorney, it is difficult to believe that IG Wertheimer would not have clearly invoked advice of counsel in her testimony before Congress or her initial response to the IC had such advice, in fact, occurred.

Even if such advice had been given to IG Wertheimer, the IC finds that it would have been patently unreasonable for her to have followed it. The record is clear that even the OIG's Office of Counsel was fully aware of the requirement to keep the whistleblower's identity confidential. This is corroborated by the OIG's request to the whistleblower for permission to waive her confidentiality, which IG Wertheimer knew when she made the disclosure to FHFA Director Watt. In fact, the record has no evidence that the OIG's legal position on this point had reversed course, as IG Wertheimer now claims.

Regardless, the defense of "I did it based on the advice of counsel" is akin to the "I was just following orders" defense in a military setting. Neither is a free pass; such claims are assessed in a much broader context. Even the caselaw cited by IG Wertheimer concurs, stating that "reliance on the advice of counsel 'does not operate as an automatic defense, but is only one factor to be considered.'" *Sec. & Exch. Comm'n v. Prince*, 942 F. Supp. 2d 108, 138 (D.D.C. 2013) (quoting *S.E.C. v. Savoy Industries*, 665 F.2d 1310, 1314 n. 28 (D.C. Cir.1981)) [emphasis added].

⁴¹ Encl. 2. For example, IG Wertheimer testified before Congress that, among other provisions, section 4 of the IG Act required her notification to FHFA Director Watt. Encl. 1, Ex. 7 at 40. Section 4(a)(5) of the IG Act states IGs will notify the agency head and Congress about deficiencies relating to the administration of programs and operations and that IGs should recommend corrective action and report on the progress made in implementing the corrective action. That was not done in this case.

⁴² The IC notes that, while IG Wertheimer referenced that there had been discussion with her staff about the situation prior to her disclosure to FHFA Director Watt, she did not raise a defense of advice of counsel in her (b) (6), (b) (7)(C), testimony before Congress nor in her December 3, 2018, response to the IC. The IC does not have CC DePasquale's perspective on IG Wertheimer's claims, as he is no longer in government and has refused to cooperate further in the IC's investigation.

That said, IG Wertheimer’s “advice of counsel” assertion is directly refuted by the universally known, understood, and practiced legal requirements in the IG community for OIGs to staunchly protect whistleblower confidentiality, and are further belied by IG Wertheimer’s extensive legal background. In this context, IG Wertheimer was not an entry level employee, wholly reliant on career legal professionals to find her way. Rather, she was a seasoned attorney when she became an IG, having earned her J.D. from Columbia Law School, where she was a member of the Columbia Law Review, and her B.A., magna cum laude, Phi Beta Kappa from Yale College. She had been a partner at the large law firm of Wilmer Cutler Pickering Hale and Dorr prior to her appointment as IG.⁴³

If CC DePasquale advised her as IG Wertheimer now claims, it simply would not have been reasonable for her to have followed such advice. Given the centrality of the whistleblower confidentiality requirement under the IG Act and as practiced throughout the IG community, IG Wertheimer either knew or should have known that any such advice was fundamentally flawed and, at the very least, paused to seek additional guidance before proceeding. That is particularly true after she became aware that the whistleblower had specifically requested OIG anonymity and that a member of her own legal team was respecting the whistleblower’s request by asking her for a waiver before the OIG could meet with FHFA officials.⁴⁴ Based on that request, IG Wertheimer reasonably knew or should have known that disclosure of the whistleblower’s identity to FHFA officials was contingent upon consent, which had not been given.

Moreover, she reasonably knew or should have known that her office had no ongoing investigation as part of which such disclosure was unavoidable, as she herself claims that she was making her disclosure to prompt actions by another Agency office entirely. And she reasonably knew or should have known that she had no obligation to report a whistleblower’s identity in order to inform the Agency of a programmatic problem, even if she believed that such a problem existed. In short, based upon the paramount importance of whistleblower protection, the well-established practices of the IG community, this particular IG’s own background and expertise, and the evidence reasonably known and available to her, the IC finds that she could not have reasonably relied on the purported advice from CC DePasquale, even had it been given as she now asserts.

2. Abuse of Authority: DIG Parker willfully impeded the IC’s investigation

After the IC initiated its investigation and notified the subjects of the same, IC investigators requested FHFA OIG records and correspondence pertaining to the settlement agreement between the FHFA and the whistleblower, as well as records and correspondence related to the whistleblower’s complaints and subsequent investigations involving CC DePasquale, IG Wertheimer, and/or FHFA Director Watt.⁴⁵ IC investigators requested the documents on or before the close of business on April 17, 2020.

⁴³ <https://www.fhfa.gov/sites/default/files/Swearing%20In%20October%2028%202014.pdf>

⁴⁴ Encl. 1, Ex. 15 at 2-3, 12-16.

⁴⁵ Encl. 1, Ex. 25.

The documents were not received and, on April 24, 2020, at the request of the FHFA OIG, IC investigators participated in a conference call with DIG Parker and employees from the FHFA OIG Office of Counsel. During the call, DIG Parker advised the investigators that IG Wertheimer had recused herself and had delegated all authority to him for the IC's investigation.⁴⁶ DIG Parker further stated he required additional information concerning the allegations against IG Wertheimer and CC DePasquale before he would allow the FHFA OIG to provide any responsive documentation to IC investigators.⁴⁷ IC investigators provided DIG Parker with a copy of the amended notice of investigation, which included all allegations against IG Wertheimer and CC DePasquale that the IC investigators were asked to investigate.⁴⁸

On May 5, 2020, DIG Parker contacted IC investigators, questioning the IC's authority to conduct the investigation under section 11 of the IG Act. DIG Parker argued in substance that if the initial IC investigation timeframes set forth in the IG Act were exceeded, the authority of the IC to conduct its investigation expired and, as an employee of FHFA, he was precluded from releasing nonpublic information to IC investigators or the IC.⁴⁹ DIG Parker further claimed the IC investigators had to answer nine questions pertaining to the timeline for the IC's review of the complaint and the IC's decision to refer the matter for investigation before he and the FHFA OIG would comply with their document request.⁵⁰

DIG Parker's refusal to cooperate with the IC and provide access to FHFA OIG information has been longstanding, extending to a previous case, IC Case 912, where the IC substantiated wrongdoing for similar tactics despite many reasonable attempts from multiple sources requesting his cooperation. The facts in this case were a continuation of the same pattern. On June 5, 2020, the IC Chairperson informed DIG Parker that the IC had previously informed FHFA OIG of its duly authorized investigation under section 11(d) of the IG Act and that he would not engage further with DIG Parker on the IC's jurisdiction.⁵¹ The IC Chairperson also told DIG Parker that the IC expected his compliance, or unequivocal commitment to comply, by close of business, June 9, 2020, and if such unequivocal confirmation was not received by that date, then DIG Parker's course of conduct in this matter would be assessed for wrongdoing under the IC Policies and Procedures.⁵² DIG Parker remained steadfast in his refusal, stating, "At some point in time, you will be required to demonstrate

⁴⁶ Encl. 1, Ex. 29.

⁴⁷ *Id.*

⁴⁸ Encl. 1, Ex. 30.

⁴⁹ Encl. 1, Ex. 33 through 38.

⁵⁰ Encl. 1, Ex. 32. On July 8, 2020, DIG Parker told IC investigators that IG Wertheimer's "delegation of authority to me covers information from all sources, including information possessed by individuals." Encl. 1, Ex. 39. DIG Parker did not arrange any interviews with FHFA OIG staff; however, IC investigators were able to interview the proposed interviewees through direct contact with them or their attorneys—the only exception being CC DePasquale, who declined to be interviewed.

⁵¹ Encl. 1, Ex. 37. The IC Chairperson's refusal to engage further with DIG Parker on the IC's jurisdiction stemmed, in part, from a prior investigation (IC Case 912), in which the former IC Chairperson addressed similar claims raised by DIG Parker.

⁵² *Id.*

to a third party your authority to subject me to an investigation, as well as your authority to continue Investigation No. 971.”⁵³ Consequently, on August 31, 2020, the IC expanded the scope of the investigation to include allegations against DIG Parker regarding his failure to cooperate with the IC’s duly authorized investigation.

After thoroughly reviewing the evidence and DIG Parker’s response, the IC finds DIG Parker abused his authority when he continually denied IC investigators access to requested FHFA OIG information, thereby impeding the IC’s investigation. Again, this is the second IC investigation in which DIG Parker’s obstructionist tactics prevented the IC from having access to a complete record of the facts.

The first question raised by DIG Parker is whether he was serving in a position subject to IC oversight. The short answer is yes, he was. Congress created the IC as an independent body to ensure senior officials in the IG community “perform their duties with integrity,” and gave the IC the authority to establish additional policies and procedures to ensure fairness and consistency in determining whether to initiate an investigation and how such investigations should be conducted.⁵⁴ Accordingly, the IC included in its policies and procedures individuals serving in an acting or interim capacity in a covered position as persons subject to its authority.⁵⁵

In this case, IG Wertheimer delegated to DIG Parker the authority to respond on behalf of FHFA OIG to requests for information made in connection with the IC’s investigation. Nonetheless, DIG Parker claims the IC lacks statutory authority to issue a finding of wrongdoing against him because he is not a “covered” individual as he does not report directly to the IG nor is he a designated staff member.⁵⁶ The IC finds this argument to lack merit. Once DIG Parker accepted IG Wertheimer’s delegation, he agreed to act in her capacity as the IG for that purpose and was subject to the same responsibilities. Accordingly, the IC has jurisdiction over his actions pursuant to that delegation. To conclude otherwise would enable an IG to vest his or her subordinates with responsibilities that would effectively be beyond IC review, which would be both illogical and contrary to the accountability that the IG Act established in the IC.

The second question regarding the IC’s authority is whether the IC investigation timeframes reflected in the IG Act serve as deadlines by which the IC must complete investigations or lose its oversight authority. In 2016, Congress amended the IG Act, in part, to strengthen the IC investigation process without being overly prescriptive, including the establishment of timeframes “to ensure the IC is moving efficiently toward completing the investigation and keeping Congress apprised of delays as well as informed of the results.”⁵⁷ The timeframes in section 11(d) are simply notification requirements; therefore, any IC action taken in excess of those timeframes would not be precluded as

⁵³ Encl. 1, Ex. 38.

⁵⁴ H. Rept. 110-354, *supra*.

⁵⁵ ICP&P (2018), section 2.

⁵⁶ Encl. 3.

⁵⁷ U.S. Senate Committee on Homeland Security and Governmental Affairs, *Inspector General Empowerment Act of 2015*, 114th Cong. (May 5, 2015) (S. Rep. No. 114-36).

beyond the clear jurisdiction of the IC. Accordingly, the IC disagrees with DIG Parker's characterization of its statutory authority in this regard.

Turning to the substance of the allegations against DIG Parker, the IG Act requires the IC Chairperson to conduct a "thorough and timely investigation" in accordance with CIGIE's Quality Standards for Investigations (QSI).⁵⁸ To be thorough and independent under the IG Act and the QSI, investigations must be conducted in a diligent and complete manner to ensure that pertinent issues are sufficiently resolved; therefore, investigators must have access to *all* information, records, and witnesses they deem relevant to their investigation, free from external restrictions.⁵⁹

DIG Parker has acknowledged that he was vested with the sole authority to make information held by FHFA OIG available to IC investigators. Instead of complying with IC investigators' requests, DIG Parker insisted the IC first answer a series of questions and provide documents to the FHFA OIG. DIG Parker argues he did not fail to cooperate because neither the IC nor its investigator provided him with the information that would have permitted him to do so.⁶⁰ DIG Parker remained steadfast in his conviction that the IC did not have authority to conduct this investigation for the flawed reasons addressed above. The IC made numerous efforts to dissuade DIG Parker from these untenable contentions, without success.⁶¹

This is the second IC investigation in which DIG Parker's actions placed significant aspects of the conduct of IG Wertheimer and her senior leadership beyond the oversight intended by the IG Act. As referenced above, DIG Parker was under investigation by the IC for similar conduct in IC Case 912, when he again chose to withhold access to requested evidence from the IC.⁶² As in that case, the IC finds DIG Parker's recalcitrance to be indefensible and fundamentally inconsistent with the IG Act and the express intent of Congress that IGs and their offices cooperate with the IC in order to enable it to fully and fairly investigate allegations of misconduct made against them.⁶³

⁵⁸ IG Act, section 11(d)(6)(A), 11(d)(7)(A).

⁵⁹ *Quality Standards for Investigations* (CIGIE 2011) at 7, 8 (denial of access to witnesses and documents impairs the independence and thoroughness of an investigation, violating applicable standards). *See also Id.* at 11 (requiring collection of all relevant evidence).

⁶⁰ DIG Parker made a similar argument in IC Case 912, stating the only impediment to the investigation was the IC because it never identified the specific information it was looking for or how it was essential to the investigation. The IC found that in addition to being inconsistent with the law that *required* DIG Parker to provide IC investigators with access, his attempt to shift blame – to the investigators – was meritless given the fact that IC investigators are not required to justify the relevance of their requests to the subject of the investigation.

⁶¹ Encl. 1, Ex. 33 through 38.

⁶² In IC Case 912, the IC found by a preponderance of the evidence that IG Wertheimer, CC DePasquale, and DIG Parker abused their authority when they continually denied IC investigators full access to FHFA OIG personnel and documents, thereby impeding the IC's investigation. The IC determined IG Wertheimer, CC DePasquale, and DIG Parker had no supportable legal basis to claim for the FHFA OIG the authority to decide what evidence the IC would be allowed to see and hear or to withhold information relevant to the investigation.

⁶³ "If the Inspector General deems a document relevant to do his job, then the agency should turn it over immediately, without hesitation or review... Under the law, an inspector general must be independent, because agencies cannot be trusted to investigate themselves." Senator Grassley's prepared statement at the Judiciary Committee Hearing, *'All' Means 'All': The Justice Department's Failure to Comply with Its Legal Obligation to*

3. Conduct of CC DePasquale

Due in part to the lack of cooperation from DIG Parker and the FHFA OIG, IC investigators could not make a finding on the allegation that CC DePasquale also disclosed the whistleblower's identity to senior agency officials without the whistleblower's consent.⁶⁴ As described below, CC DePasquale denied wrongfully revealing the whistleblower's OIG nexus. And the person to whom he discussed the matter had no recollection as to that aspect of the conversation.

Specifically, CC DePasquale told the IC that he had a discussion with the FHFA [REDACTED] about the whistleblower on April 11, 2018, and had "advised [the] FHFA [REDACTED] that FHFA needed to make sure that its EEO office addressed [the whistleblower's] EEO complaint fully and appropriately." CC DePasquale further stated he "did not disclose to [REDACTED] that [the whistleblower] had filed a hotline complaint, or the specific allegations contained in her complaint, or the specific details contained in her counsel's letter to OIG beyond that the Agency refused to accept her claim."⁶⁵

However, [REDACTED] told IC investigators that he did not recall such a conversation. [REDACTED] stated he and CC DePasquale had discussed complaints the FHFA OIG had forwarded to the Office of Special Counsel, but the complaint filed by the anonymous whistleblower was not one of them. [REDACTED] did not recall if CC DePasquale had ever talked to him about the whistleblower's EEO complaint.⁶⁶

Conclusions and Recommendations

The IC finds by a preponderance of the evidence that IG Wertheimer abused her authority and engaged in substantial misconduct by violating section 7(b) of the IG Act when she disclosed a whistleblower's identity without consent, which is directly contrary to the core requirement for IGs to protect whistleblower confidentiality. Notably, this is the second IC investigation that substantiated allegations of wrongdoing involving actions by IG Wertheimer that adversely impacted whistleblowers. Moreover, the investigative findings are particularly disconcerting given her extensive legal and professional experience. Considering, however, that IG Wertheimer left federal service on June 29, 2021, the IC makes no recommendation as to disciplinary or other corrective action.

The IC finds by a preponderance of the evidence that DIG Parker abused his authority when he, as a government employee and senior OIG leader, repeatedly and improperly denied lawful IC requests for access to government information. There was no reasonable basis for DIG Parker, an executive branch employee, to block executive branch investigators from access to government evidence. DIG Parker's conduct was part of a continued course of obstructionist behavior that, for two IC investigations, placed significant aspects of the conduct of IG Wertheimer and her senior leadership beyond the oversight provided for in the IG Act. Accordingly, the IC recommends that DIG Parker

Ensure Inspector General Access to All Records Needed for Independent Oversight, 114th Cong. (Aug. 5, 2015).

⁶⁴ Encl. 1 at 2.

⁶⁵ Encl. 1, Ex. 1a, pages 110-111.

⁶⁶ Encl. 1, Ex.17.

be subject to appropriate disciplinary action reflecting the repeated and ongoing nature of his misconduct.

The IC has also provided its findings, conclusions, and recommendations to the CIGIE Executive Chairperson, the CIGIE Chairperson, and the Congressional committees of jurisdiction, as required by section 11(d)(8)(A) of the IG Act.

Sincerely,

(b) (6)

Kevin H. Winters
Chairperson
Integrity Committee

Enclosures:

1. HHS OIG Report to the Integrity Committee
2. IG Wertheimer's Comments
3. DIG Parker's Comments
4. CC DePasquale's Comments



Department of Health and Human Services
OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS



August 24, 2021

CONFIDENTIAL

TO: Kevin Winters
Chairperson
Integrity Committee of the Council of the
Inspectors General on Integrity and Efficiency

THROUGH: Christi A. Grimm
Principal Deputy Performing Duties of the Inspector General

CHRISTI GRIMM
Digitally signed by
CHRISTI GRIMM
Date: 2021.08.24
09:21:01 -0400

FROM: Gary L. Cantrell
Deputy Inspector General for Investigations

GARY CANTRELL
Digitally signed by
GARY CANTRELL
Date: 2021.08.24
09:05:19 -0400

SUBJECT: Report of Investigation Regarding Federal Housing Finance
Agency Senior Officials
(b) (5), (b) (7)(C)

EXECUTIVE SUMMARY

On May 22, 2019, the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) requested that the Department of Health and Human Services (HHS), Office of Inspector General (OIG), investigate allegations of wrongdoing against Leonard DePasquale (DePasquale), Chief Counsel to the Federal Housing Finance Agency (FHFA) OIG. The IC takes action on allegations of wrongdoing that involve an abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.¹ Specifically, the IC asked HHS-OIG to investigate whether Chief Counsel DePasquale:

Abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when he disclosed **(b) (5), (b) (7)(C)**

¹ Integrity Committee Policies and Procedures (2018).

(b) (6), (b) (7)(C) identity and her anonymous complaint to senior agency officials without her consent.²

On June 26, 2019, a Memorandum of Understanding (MOU) was finalized and signed by CIGIE and HHS-OIG officials.³ The MOU established the terms and conditions by which HHS-OIG would provide investigative support to the CIGIE IC Chairperson. On August 28, 2019, HHS-OIG Office of Investigations, Special Investigations Branch, opened an investigation into the allegations of misconduct by Chief Counsel DePasquale.

On October 18, 2019, the IC amended the scope of the investigation to include allegations of wrongdoing by FHFA Inspector General Laura Wertheimer (IG Wertheimer).⁴ Specifically, the IC asked HHS-OIG to investigate:

1. whether Chief Counsel DePasquale abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when he disclosed (b) (6), (b) (7)(C) identity and her anonymous complaint to senior agency officials without her consent;
2. whether IG Wertheimer violated section 7(b) of the Inspector General Act of 1978 (IG Act), as amended, when she disclosed (b) (6), (b) (7)(C) identity and details about her anonymous complaint to senior agency officials without (b) (6), (b) (7)(C) consent; and
3. whether, on (b) (6), (b) (7)(C), IG Wertheimer engaged in conduct that undermines the independence and integrity reasonably expected of an IG by omitting from her testimony to Congress the material fact that the Chief Counsel DePasquale had disclosed (b) (6), (b) (7)(C) identity, without her consent, to FHFA's (b) (6), (b) (7)(C) 2 weeks prior to IG Wertheimer's disclosure of (b) (6), (b) (7)(C) identity to the FHFA Director.

Upon notification of this investigation to FHFA-OIG, the Acting FHFA Deputy Inspector General for Investigations, Richard Parker (Parker), assumed the role of Acting FHFA IG in this matter. From April 2020 through July 2020, as the Acting FHFA IG, Parker failed to cooperate with the HHS-OIG and the CIGIE IC on multiple occasions during the investigation. On August 31, 2020, the CIGIE IC requested that Acting Deputy IG Parker's lack of cooperation be added to the HHS-OIG instant investigation for appropriate action. Acting Deputy IG Parker's alleged violations related to his lack of cooperation will be discussed in a separate section of the report.

The investigation determined the record contains insufficient evidence to support the allegation that on April 11, 2018, Chief Counsel DePasquale abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person by disclosing (b) (6), (b) (7)(C) identity and her anonymous complaint to (b) (6), (b) (7)(C) in FHFA's Office of General Counsel, without (b) (6), (b) (7)(C) consent. Due to the lack of cooperation from the FHFA-OIG, HHS-OIG was unable to independently corroborate the existing evidence and therefore could not make any findings on the underlying allegation against Chief Counsel DePasquale.

² Exhibit 1: CIGIE IC Request Letter dated May 20, 2019, Exhibit 1a: IC Referral Documents.

³ Exhibit 2: CIGIE IC and HHS-OIG Interagency Agreement (CIG19082) dated June 17, 2019, and MOU between CIGIE IC and HHS-OIG dated June 14, 2019.

⁴ Exhibit 3: CIGIE IC Request Letter dated October 18, 2019.

The investigation also determined IG Wertheimer violated the IG Act when, on April 25, 2018, she disclosed (b) (6), (b) (7)(C) identity and details about (b) (6), (b) (7)(C) anonymous complaint to senior agency officials without (b) (6), (b) (7)(C) consent.

The investigation did not find evidence to support the allegation that on (b) (6), (b) (7)(C), IG Wertheimer engaged in conduct that undermines the independence and integrity reasonably expected of an IG by omitting from her testimony to Congress the material fact that Chief Counsel DePasquale had disclosed (b) (6), (b) (7)(C) identity, without (b) (6), (b) (7)(C) consent, to FHFA's (b) (6), (b) (7)(C) 2 weeks prior to IG Wertheimer's disclosure of (b) (6), (b) (7)(C) identity to the FHFA Director.

This report is submitted for your consideration and appropriate action, based on the information, facts, and evidence provided. This report contains highly sensitive investigative information and should be disseminated only when required by 5 U.S.C. § 1219, and as necessary to determine and initiate appropriate administrative activity.

Department of Health and Human Services
Office of Inspector General
Office of Investigations
Special Investigations Branch



Report of Investigation Regarding
Federal Housing Finance Agency Senior Officials

Office of Investigations Case # [REDACTED]

Council of the Inspectors General on Integrity and Efficiency
Integrity Committee Complaint #971

Notice



THIS REPORT CONTAINS SENSITIVE INFORMATION

This report summarizes an Office of Inspector General investigation initiated by a referral from the Integrity Committee of the Council of the Inspectors General on Integrity and Efficiency. It contains highly sensitive investigative information and should only be disseminated as necessary, with particular care given to protecting individual identities and identifying information. This report cannot be released without specific approval by the Deputy Inspector General for Investigations except as required by 5 U.S.C. § 1219 or any other applicable bodies of law.

Subjects of Investigation:

Leonard DePasquale
Federal Housing Finance Agency
Chief Counsel
Office of Office of Inspector General

Laura Wertheimer
Federal Housing Finance Agency
Inspector General
Office of Inspector General

Richard Parker
Federal Housing Finance Agency
Acting Deputy Inspector General
Office of Inspector General

BACKGROUND AND SUMMARY OF EVENTS

(b) (6), (b) (7)(C) began her employment at the Federal Housing Finance Agency (FHFA) (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) served as (b) (6), (b) (7)(C) within FHFA's (b) (6), (b) (7)(C). In January 2015, (b) (6), (b) (7)(C) agreed to accept temporary assignment of duties as (b) (6), (b) (7)(C) while continuing to perform the duties associated with her permanent position. In January 2018, (b) (6), (b) (7)(C) interviewed and was selected for the (b) (6), (b) (7)(C) position. From January 2018 through March 2018, FHFA Office of Inspector General (OIG) launched an investigation into whether (b) (6), (b) (7)(C) selection for the position of (b) (6), (b) (7)(C) was fair. FHFA-OIG reported they were following up on an anonymous hotline complaint.

On March 19, 2018, (b) (6), (b) (7)(C) filed an anonymous complaint (b) (6), (b) (7)(C) via the FHFA-OIG Hotline.⁵ First, (b) (6), (b) (7)(C) alleged that FHFA officials misused the FHFA-OIG Hotline and filed false claims to perpetuate discrimination in the FHFA workforce. Second, (b) (6), (b) (7)(C) alleged that FHFA failed to uphold its Anti-Harassment Statement and Anti-Harassment Policy, Procedures, and Responsibilities. (b) (6), (b) (7)(C) claimed that FHFA failed to hold those accountable who filed false complaints that resulted in the harassment of protected class employees to include herself. (b) (6), (b) (7)(C) also claimed that FHFA offered no type of assistance to the harassed employees. In subsequent complaints, (b) (6), (b) (7)(C) alleged violations of laws, regulations, and policies by several FHFA-OIG senior officials.

On August 13, 2018, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) attorney, (b) (6), (b) (7)(C) (Attorney (b) (6), (b) (7)(C)), contacted the Federal Deposit Insurance Corporation's (FDIC) General Counsel. Among other complaints, (b) (6), (b) (7)(C) alleged "a lack of independence between IG Wertheimer and FHFA Director Melvin Watt" (Director Watt). FDIC's General Counsel referred (b) (6), (b) (7)(C) complaints to the CIGIE IC on August 30, 2018.⁶

On September 6, 2018, (b) (6), (b) (7)(C) contacted the CIGIE IC. (b) (6), (b) (7)(C) requested an investigation into the independence of IG Wertheimer and Director Watt. (b) (6), (b) (7)(C) stated, "[w]e have been referred to your office by Senators Crapo and Brown of the United States Senate Committee on Banking Housing and Urban Affairs." On September 21, 2018, (b) (6), (b) (7)(C) filed a formal complaint with the IC Working Group. In (b) (6), (b) (7)(C) complaint, she noted several instances of wrongdoing by FHFA senior officials, including the improper disclosure of her identity and her anonymous complaint by IG Wertheimer to Director Watt. (b) (6), (b) (7)(C) also filed complaints against FHFA Chief Counsel DePasquale.⁷

⁵ Exhibits 4 and 4a: (b) (6), (b) (7)(C) anonymous complaint. Copies of (b) (6), (b) (7)(C) anonymous complaint were obtained from Chief Counsel DePasquale's submission to the IC (DePasquale Attachment 5) and IG Wertheimer's submission to the IC (Wertheimer Exhibit 2).

⁶ Exhibit 5: FDIC General Counsel's email to CIGIE IC, dated August 30, 2018. FDIC's General Counsel also noted that on May 9, 2018, (b) (6), (b) (7)(C) filed an EEO complaint against Director Watt. To avoid conflicts of interest, FHFA's EEO Office referred the complaint to outside entities—the United States Postal Service to investigate and FDIC for Alternative Dispute Resolution.

⁷ Exhibit 6: (b) (6), (b) (7)(C) email to the IC Working Group dated September 6, 2018, and (b) (6), (b) (7)(C) complaint submission to the IC Working Group dated September 21, 2018.

On (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) IG Wertheimer, and Director Watt testified before the House (b) (6), (b) (7)(C) .⁸

According to a FHFA (b) (6), (b) (7)(C) , FHFA reached a resolution with (b) (6), (b) (7)(C) . Details of the settlement were not made public.⁹

SUMMARY OF INVESTIGATIVE ACTIVITIES

HHS-OIG investigators provided FHFA-OIG with an official OIG Request for Information. FHFA-OIG officials neither complied with HHS-OIG's Request for Information nor cooperated with the facilitation of subject and witness interviews. HHS-OIG investigators contacted subjects and witnesses directly for interviews during the investigation; however, DePasquale did not avail himself for an interview. Investigators requested assistance from the complainant, (b) (6), (b) (7)(C) ; however, (b) (6), (b) (7)(C) did not respond to any of the investigators' calls or emails. Investigators also requested, and received, records and assistance from the U.S. Postal Service (USPS) Deputy General Counsel's Office, who conducted an EEO investigation, and the FDIC General Counsel to the IG, who also received a complaint from (b) (6), (b) (7)(C) . Additionally, investigators interviewed former and current FHFA employees.

Summaries of Witness Interviews

(b) (6), (b) (7)(C) — (b) (6), (b) (7)(C) , FHFA's (b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) .¹⁰

(b) (6), (b) (7)(C) agreed to speak with investigators after he had an opportunity to review his records. (b) (6), (b) (7)(C) noted that the matter with (b) (6), (b) (7)(C) had several layers. (b) (6), (b) (7)(C) reported that he made a little note of Chief Counsel DePasquale's visit to his office on April 11, 2018. According to (b) (6), (b) (7)(C) Chief Counsel DePasquale stopped by his office to update him on the status of the complaints that FHFA-OIG had forwarded to the Office of Special Counsel (OSC) involving (b) (6), (b) (7)(C) . Chief Counsel DePasquale stated that the OIG requested expedited review. (b) (6), (b) (7)(C) advised that the matters forwarded to OSC involved anonymous complaints alleging that (b) (6), (b) (7)(C) had been preselected for the (b) (6), (b) (7)(C) position. Chief Counsel DePasquale stated that he advised Director Watt to hold off on filling the position until OSC review.

(b) (6), (b) (7)(C) said that given the delays and her complaints to OIG, (b) (6), (b) (7)(C) was upset and felt she was being treated unfairly. (b) (6), (b) (7)(C) reported that (b) (6), (b) (7)(C) had visited him on February 22, 2018, and March 1, 2018. (b) (6), (b) (7)(C) stated that he advised (b) (6), (b) (7)(C) to go to the Equal Employment Opportunity (EEO) Office. (b) (6), (b) (7)(C) stated that he "doesn't think anyone knows" he advised (b) (6), (b) (7)(C) to go to the EEO Office. On March 1, 2018, (b) (6), (b) (7)(C) followed up with (b) (6), (b) (7)(C) confirmed that she met with (b) (6), (b) (7)(C) the FHFA EEO Office.

⁸ Exhibit 7: Congressional Testimony of (b) (6), (b) (7)(C) Director Watt, and IG Wertheimer.

⁹ Exhibit 8: (b) (6), (b) (7)(C) .

¹⁰ Exhibits 16 and 17.

(b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that she could file a complaint against (b) (6), (b) (7)(C), but not an external party. (b) (6), (b) (7) stated that he just made a note of it. EEO is an independent office and he has no authority over it.

(b) (6), (b) (7) reported that he does not tell anyone else when he refers someone to EEO. (b) (6), (b) (7) stated that he had an idea that (b) (6), (b) (7)(C) was probably involved in the EEO process.

According to (b) (6), (b) (7)(C) Chief Counsel DePasquale said, “essentially any EEO complaint should be addressed fully and would [sic] speak to EEO complainant’s lawyer before revealing the name of that person.”

When asked if Chief Counsel DePasquale instructed him to go to EEO to have (b) (6), (b) (7)(C) complaint addressed, (b) (6), (b) (7) stated, “no, that’s not correct.” (b) (6), (b) (7) also stated he has no role in EEO, but he knew the process was moving forward with EEO. (b) (6), (b) (7) explained that the matter was with OSC, and they were investigating the complaints.

Investigators advised (b) (6), (b) (7) that the EEO Office informed (b) (6), (b) (7)(C) that she could not pursue EEO counseling over the instant matter unless she was able to specifically identify the alleged discriminator.

Investigators conducted a followup interview with (b) (6), (b) (7)(C) Investigators asked whether April 11, 2018, was the first time DePasquale talked to him about (b) (6), (b) (7)(C) anonymous complaint. (b) (6), (b) (7) stated that he did not recall DePasquale talking to him about (b) (6), (b) (7)(C) anonymous complaint. DePasquale discussed the FHFA-OIG complaints involving (b) (6), (b) (7)(C) that DePasquale and FHFA-OIG had forwarded to OSC.

Investigators asked whether (b) (6), (b) (7)(C) learned from DePasquale that the anonymous complainant was (b) (6), (b) (7)(C) (b) (6), (b) (7) stated that DePasquale did not discuss (b) (6), (b) (7)(C) anonymous complaint. DePasquale discussed the anonymous complaints that FHFA-OIG forwarded to OSC involving (b) (6), (b) (7)(C) (b) (6), (b) (7) said he did not see the referral package that FHFA-OIG had forwarded to OSC; however, he can speculate from the May 3, 2018, close out letter from OSC that the referral involved anonymous complaints alleging prohibited personnel practices by FHFA.

Investigators asked what DePasquale’s attitude was when he first revealed to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) identity with regard to the anonymous complaint (i.e., was DePasquale casual about it, did it seem malicious, was he frustrated about her complaint, did it seem to be an accidental slip or was it purposeful). (b) (6), (b) (7) stated that this did not occur. (b) (6), (b) (7) also stated that he could not recall DePasquale’s attitude or demeanor when DePasquale discussed the FHFA-OIG anonymous complaints he forwarded to OSC involving (b) (6), (b) (7)(C)

Investigators asked whether (b) (6), (b) (7) was surprised when DePasquale revealed the identity of an anonymous complainant. (b) (6), (b) (7) stated that this did not happen. According to (b) (6), (b) (7)(C) he could speculate that he was confused when DePasquale made the statement, “essentially any EEO complaint should be addressed fully and would [sic] speak to EEO complainant’s lawyer before revealing the name of that person.” (b) (6), (b) (7) noted that it is the law for all EEO

complaints to be fully addressed. [REDACTED] trusted that OSC would do a thorough review and take appropriate action.

Investigators asked [REDACTED] whether he had taken any additional notes after DePasquale made the statement, “essentially any EEO complaint should be addressed fully and would [sic] speak to EEO complainant’s lawyer before revealing the name of that person.” [REDACTED] stated that he did not. [REDACTED] was asked about the events that transpired after DePasquale made that statement. According to [REDACTED] he did not know the point of DePasquale statement. His focus was on what his orders were, to ensure that [REDACTED] and the team did not fill the position until OSC provided a response. [REDACTED] referred again to the May 3, 2018, OSC letter, and IG Wertheimer’s testimony in relation to [REDACTED] and DePasquale’s conversation about not filling the (b) (6), (b) (7)(C) position. [REDACTED] stated that it seemed as if they (FHFA-OIG) found a prohibited personnel action.

The investigator advised [REDACTED] that the information received from DePasquale¹¹ indicated that DePasquale advised [REDACTED] to contact the FHFA EEO Office to have them address [REDACTED] anonymous complaint. [REDACTED] stated that maybe DePasquale thought that coming to him on April 11, 2018, and making those statements, in DePasquale’s view, was beneficial. [REDACTED] stated that he did not care why DePasquale said what he said; however, it was clear from IG Wertheimer’s testimony what the conversation between him and DePasquale was about. The investigator noted that there is compelling information to suggest that DePasquale told [REDACTED] to contact the EEO Office to have them address [REDACTED] anonymous complaint. In response, [REDACTED] stated no one has a right to tell EEO how to do their job or what to do.

[REDACTED] (b) (6), (b) (7)(C) — [REDACTED] (b) (6), (b) (7)(C), FHFA’s [REDACTED] (b) (6), (b) (7)(C) . [REDACTED] (b) (6), (b) (7)(C)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] .¹²

[REDACTED] (b) (6), (b) (7)(C) agreed to speak with investigators after he had an opportunity to review his records. [REDACTED] (b) (6), (b) (7)(C) stated that he first became aware of [REDACTED] (b) (6), (b) (7)(C) EEO complaint on or around July 10, 2018. He was the Responding Management Official for an EEO complaint that [REDACTED] (b) (6), (b) (7)(C) had filed. The EEO investigator sent him a copy of the summary of the allegations (dated May 9, 2018) and the documentation [REDACTED] (b) (6), (b) (7)(C) submitted in support of her allegations. While the main allegation involved [REDACTED] (b) (6), (b) (7)(C), [REDACTED] (b) (6), (b) (7)(C) recalled seeing another allegation, that the FHFA Director questioned [REDACTED] (b) (6), (b) (7)(C) about the status of an anonymous complaint submitted by [REDACTED] (b) (6), (b) (7)(C) to the FHFA-OIG. The question by the FHFA Director alarmed [REDACTED] (b) (6), (b) (7)(C) because she submitted the complaint anonymously and she refused to waive her right to anonymity. According to [REDACTED] (b) (6), (b) (7)(C) when [REDACTED] (b) (6), (b) (7)(C) questioned what complaint the FHFA Director was alluding to, the FHFA Director did not specifically state how he gained knowledge of her anonymous complaint, he only stated that “he had heard” of her complaint.

¹¹ Exhibit 14: Chief Counsel DePasquale provided a response to the CIGIE IC regarding allegations against him.

¹² Exhibits 18 and 19.

(b) (6), (b) (7)(C) referenced an internal management investigation that had been conducted as a result of (b) (6), (b) (7)(C) allegations. In the Report of Investigation, (b) (6), (b) (7)(C) did not allege that the OIG inappropriately disclosed anything; however, she stated that she filed an anonymous complaint and somehow Director Watt knew about it.

(b) (6), (b) (7)(C) also referenced an investigation conducted by a contract investigator for USPS. (b) (6), (b) (7)(C) noted that the issues in relation to the anonymous disclosure were given a little more clarity. In the USPS Report of Investigation, (b) (6), (b) (7)(C) alleged that senior agency officials including FHFA Director Watt, (b) (6), (b) (7)(C) and FHFA counsel received information from FHFA-OIG regarding investigations related to (b) (6), (b) (7)(C) including (b) (6), (b) (7)(C) anonymous complaints. (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) allegation about him was not true.

(b) (6), (b) (7)(C) did not think the contract investigator asked him directly about the disclosure of (b) (6), (b) (7)(C) complaint. The contract investigator asked (b) (6), (b) (7)(C) what he was aware of regarding OIG complaints involving (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) recalled the OIG complaints that FHFA was investigating at that time, but it did not cross his mind that (b) (6), (b) (7)(C) also filed an anonymous complaint.

When asked about his conversation with (b) (6), (b) (7)(C) on April 10, 2018, (b) (6), (b) (7)(C) stated that basically (b) (6), (b) (7)(C) felt she was being harassed because of all the OIG Hotline complaints in relation to the position (b) (6), (b) (7)(C) had been selected for. In discussing the matter, (b) (6), (b) (7)(C) advised that she was not sure if she was going to file an EEO complaint.

Via email, (b) (6), (b) (7)(C) responded in the negative to the following questions: Did DePasquale ever reveal the identity of an anonymous complainant to you? Are you aware of DePasquale revealing the identity of an anonymous complainant to anyone else at FHFA? Did IG Wertheimer ever reveal the identity of an anonymous complainant to you? Are you aware of IG Wertheimer revealing the identity of an anonymous complainant to anyone else at FHFA?

(b) (6), (b) (7)(C) stated that he did not have direct knowledge of the event,¹³ but his recollection is that during her congressional testimony, IG Wertheimer essentially admitted that she had told Director Watt about an anonymous complaint because it involved a matter she felt was being mishandled by the FHFA EEO Office. He could not recall the details without going back and reviewing that testimony, but he believed it may have involved disclosing the complainant's identity. Other than this one circumstance, which he believed is in the public record, he was not aware of IG Wertheimer disclosing the identity of an anonymous complainant to others at FHFA.

Melvin Watt—former FHFA Director. Watt served as the FHFA Director from 2014 to 2019. Watt also served as the U.S. Representative for North Carolina's 12th congressional district from 1993 to 2014.¹⁴

¹³ The "event" being referred to is IG Wertheimer revealing the identity of an anonymous complainant to anyone else at FHFA.

¹⁴ Exhibits 20 and 21.

When asked if he recalled the circumstances in which he received information about (b) (6), (b) (7)(C) anonymous complaint to the FHFA-OIG, Watt recalled that IG Wertheimer confirmed that she gave him the information for some legal reason. Watt referenced the testimony IG Wertheimer gave (b) (6), (b) (7)(C).

Watt stated that he has no independent recollection of the events that transpired involving the disclosure of (b) (6), (b) (7)(C) anonymous complaint. He stated he could probably go through his records to reconstruct the timeline; however, it would take him some time to obtain the records as they are not stored at his residence.

Watt recalled testifying about the disclosure in his deposition as part of the FHFA-OIG's investigation into his alleged misconduct. Whatever he said in his deposition would have been his independent recollection of the events at that time.

When asked if he recalled his conversation with (b) (6), (b) (7)(C) regarding her anonymous complaint, Watt stated he could not recall. Watt noted that he had very "miniscule" conversations with (b) (6), (b) (7)(C) although she tried to make it sound like there was a lot more "going on." When asked if he brought up the complaint with (b) (6), (b) (7)(C) Watt stated he could not really recall.

In a followup interview, Watt stated that he did not have a clear recollection of the circumstances by which IG Wertheimer described the details of (b) (6), (b) (7)(C) anonymous complaint, as it had been so long ago. To the best of his recollection, the anonymous complaint was not made against him. IG Wertheimer felt that Watt, as the FHFA Director needed to be made aware that a complaint had been made. Watt noted that IG Wertheimer testified to this effect (b) (6), (b) (7)(C). He did not recall the timeframe of the aforementioned events.

Watt clarified that IG Wertheimer only disclosed the name of (b) (6), (b) (7)(C) the complainant. She did not disclose the name(s) of the individual(s) involved in the complaint. According to Watt, IG Wertheimer reported the complaint to him out of a sense of duty—there was no malice about it—it was informational.

When asked about his previous statement to the investigator that IG Wertheimer told him about (b) (6), (b) (7)(C) complaint (and the identity of (b) (6), (b) (7)(C)) for legal reasons, Watt confirmed that he made that statement because IG Wertheimer advised him of (b) (6), (b) (7)(C) anonymous complaint for informational purposes, as it was an internal FHFA matter that he should have been made aware of as the FHFA Director.

Watt advised that he did not have any reason to believe that IG Wertheimer violated the IG Act; however, he was not sure about the standards in relation to the IG Act. He stated he did not think that IG Wertheimer reported the information to him in any malicious way. Watt again referred to IG Wertheimer's testimony (b) (6), (b) (7)(C).

Watt advised that he knew DePasquale but not in the context related to (b) (6), (b) (7)(C) anonymous complaint. Watt did not believe that DePasquale had any involvement in (b) (6), (b) (7)(C) disclosure. Watt stated that he thought DePasquale was behind the efforts to prove that he (Watt) had done something improper.

Watt was made aware of the definition of conduct unbecoming as it pertained to IG Wertheimer and DePasquale as “covered persons” in accordance with the IG Act. Watt stated that he was not a fan of DePasquale; however, he was not aware of any legally improper conduct by DePasquale.

When asked if he was aware of DePasquale disclosing (b) (6), (b) (7)(C) identity or anyone else’s anonymous complaints to any individuals, Watt stated, “No.”

Watt stated that it is highly unlikely he would be able to go through his records to reconstruct the timeline of the events that occurred when IG Wertheimer advised him of (b) (6), (b) (7)(C) anonymous complaint. According to Watt, he has the information “packed up in the mountains” and he has no reason to locate the information “unless another complaint is made against [him].”

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) FHFA’s (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)
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(b) (6), (b) (7)(C) recalled that he spoke with (b) (6), (b) (7)(C) in relation to the anonymous complaints about her preselection for the (b) (6), (b) (7)(C) position. He stated that he advised (b) (6), (b) (7)(C) that the EEO Office could not investigate her complaint unless she could identify the person who had made the complaint. (b) (6), (b) (7)(C) noted that (b) (6), (b) (7)(C) had also filed other EEO complaints.

When asked if (b) (6), (b) (7)(C) contacted him in relation to the disclosure of (b) (6), (b) (7)(C) anonymous complaint, (b) (6), (b) (7)(C) stated, “No.” When asked if (b) (6), (b) (7)(C) asked him to investigate the disclosure of (b) (6), (b) (7)(C) anonymous complaint to FHFA senior officials, (b) (6), (b) (7)(C) also stated, “No.” (b) (6), (b) (7)(C) noted that (b) (6), (b) (7)(C) knows there is nothing that EEO can do if they do not know the names of the individuals involved in the complaint.

When asked if any FHFA senior officials, including Chief Counsel DePasquale, had asked him to investigate the disclosure of (b) (6), (b) (7)(C) anonymous complaint, (b) (6), (b) (7)(C) stated, “No.”

In a followup interview, (b) (6), (b) (7)(C) responded in the negative to the following questions: Did DePasquale ever reveal the identity of an anonymous complainant to you? Are you aware of DePasquale revealing the identity of an anonymous complainant to anyone else at FHFA? Did IG Wertheimer ever reveal the identity of an anonymous complainant to you? Are you aware of IG Wertheimer revealing the identity of an anonymous complainant to anyone else at FHFA? Did you feel DePasquale or Wertheimer did anything unbecoming of their position (i.e., did you ever observe or hear of any actions taken by them that you

¹⁵ Exhibits 22 and 23.

thought were unprofessional or inappropriate for the Counsel to the IG or for the IG, respectively)? Have you been made aware of any formal complaints against IG Wertheimer or DePasquale in relation to (b) (6), (b) (7)(C) prior to your interview with investigators in December 2020?

(b) (6), (b) (7)(C) stated the last time he spoke with (b) (6), (b) (7)(C) was sometime in 2020 after her case with FHFA had settled; (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) regarding the terms pertaining to her settlement agreement.¹⁶

When asked if he had any communications with FHFA-OIG in relation to (b) (6), (b) (7)(C) case or any other matters involving IG Wertheimer or DePasquale, (b) (6), (b) (7)(C) stated he had not.

Laura Wertheimer—Inspector General of the Federal Housing Finance Agency.¹⁷

Throughout the interview, IG Wertheimer frequently referred to previous testimony transcripts or previously submitted written documentation.

IG Wertheimer explained that she was not aware of any policy or practice for keeping complainants' identities a secret nor did she know how a complainant's consent to disclose their identity was given. Whether or not she became aware of a complaint would depend on the complaint and there were many she was not aware of. She would be told of a complaint if it was escalated to her by (b) (6), (b) (7)(C), Chief Counsel's office, or (b) (6), (b) (7)(C). There was no one way that she would be made aware of complaints.

IG Wertheimer recalled that (b) (6), (b) (7)(C) a former FHFA employee, filed a complaint with FHFA-OIG on or about March 19, 2018. (b) (6), (b) (7)(C) brought to her attention that (b) (6), (b) (7)(C) filed a complaint in early April 2018. She stated she explained this in her written submission to the IC and she attached (b) (6), (b) (7)(C) hotline complaint to the submission. IG Wertheimer stated (b) (6), (b) (7)(C) alleged racial discrimination in promotions and also filed a number of anonymous whistleblower complaints.

In response to (b) (6), (b) (7)(C) complaint to FHFA-OIG, (b) (6), (b) (7)(C) sent correspondence to (b) (6), (b) (7)(C) and her attorney recommending that (b) (6), (b) (7)(C) file a complaint with the EEO Office of FHFA. (b) (6), (b) (7)(C) lawyer replied to that correspondence in April 2018 asking FHFA-OIG to reconsider the closing of her hotline complaint since (b) (6), (b) (7)(C) was turned away from the EEO Office. IG Wertheimer stated that time was running out on (b) (6), (b) (7)(C) EEO complaint. It did not appear that FHFA was doing anything about (b) (6), (b) (7)(C) complaint and IG Wertheimer received advice from her Chief Counsel that she should tell (b) (6), (b) (7)(C)¹⁹ to do their job and process (b) (6), (b) (7)(C) EEO complaint.

¹⁶ (b) (6), (b) (7)(C), FHFA announced an agreement with (b) (6), (b) (7)(C).

¹⁷ Exhibit 24.

¹⁸ FHFA-OIG.

¹⁹ IG Wertheimer is referring to (b) (6), (b) (7)(C).

IG Wertheimer explained that (b) (6), (b) (7)(C) did not consent to disclose her identity in her initial complaint, and she was aware that (b) (6), (b) (7)(C) initially requested anonymity in her March 2018 complaint. After April 2018, she became aware that (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) for her permission, via email, to disclose her name or identity. She was not aware that there was any response to that email. She could not speak to what happens if a complainant refuses to give consent to disclose their identity.

IG Wertheimer explained that (b) (6), (b) (7)(C) was on a “parallel track” by also talking to FHFA about her complaint, so she was not anonymous anymore because her concerns were also known by FHFA. IG Wertheimer stated that “you can only be anonymous if you keep yourself anonymous,” so “there was nothing to protect.” The same complaints were made to the EEO Office, (b) (6), (b) (7)(C), and the ombudsman executive in April. IG Wertheimer stated that she thinks that when (b) (6), (b) (7)(C) went to FHFA and talked to people about her complaint, it was no longer anonymous.

Director Watt and his team met with IG Wertheimer and (b) (6), (b) (7)(C) every other Wednesday. After one of their meetings, the Chief Counsel (DePasquale) of FHFA-OIG went to IG Wertheimer’s office and explained to her that they tried to get FHFA EEO to process (b) (6), (b) (7)(C) complaint, she was running out of time to file an EEO complaint, and FHFA was not going to “deal with” her complaint. DePasquale also explained to IG Wertheimer that investigators²¹ had determined that the complaint had to be filed with EEO but, EEO would not let (b) (6), (b) (7)(C) file her complaint. DePasquale further explained to IG Wertheimer that she had a duty under the law to tell Director Watt of the problems with his programs and office. IG Wertheimer had not seen (b) (6), (b) (7)(C) EEO complaint but understood it mirrored what she had given to them on March 19, 2018, about discriminatory promotion practices. IG Wertheimer explained that the allegations were troubling, (b) (6), (b) (7)(C) “needs her day, and she needs those allegations heard and investigated.” IG Wertheimer was told by DePasquale that she had a duty and responsibility to bring the allegations to Director Watt.

IG Wertheimer explained that she told DePasquale she understood (b) (6), (b) (7)(C) asked to be anonymous and asked him about that. DePasquale explained to her that “it’s unavoidable,” and that she could not tell Director Watt that “somebody has an EEO complaint, I can’t tell you who, but it’s serious.” He explained that (b) (6), (b) (7)(C) identity was already known at FHFA because she tried to file a complaint with EEO and she was talking to people in leadership at FHFA and so she was no longer anonymous about this EEO complaint. He stated that “you have to tell or else we’ll be harming this individual.”

IG Wertheimer explained that they wanted “to protect (b) (6), (b) (7)(C) protect her right to have an EEO claim.”

IG Wertheimer did not know if (b) (6), (b) (7)(C) identity was known to Director Watt. She knew it was known to (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) but did not know if Director Watt knew (b) (6), (b) (7)(C) was rebuffed from the EEO Office.

²⁰ (b) (6), (b) (7)(C).

²¹ FHFA-OIG investigators.

IG Wertheimer told Director Watt that he “needs to do his job, the EEO function, and make sure they²² file (b) (6), (b) (7)(C) complaint.” IG Wertheimer explained that while she did tell him the complainant was (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) identity was part of the conversation, she did not discuss the underlying facts of the complaint with Watt.

IG Wertheimer explained that she did not “think it’s a bar on an IG that if someone files a complaint and says they want to be anonymous that the IG can never disclose that information absent consent from the complainant.” (b) (6), (b) (7)(C) identity was no longer a secret, so the cloak of anonymity was lifted.

IG Wertheimer explained that she was aware of others on the FHFA-OIG staff who disclosed (b) (6), (b) (7)(C) identity to FHFA officials. She referred to pages 13–14 of her letter to the IC²³ which she says discusses a disclosure that was made by DePasquale to (b) (6), (b) (7)(C). She explained that DePasquale told her that she needed to get FHFA to process (b) (6), (b) (7)(C) EEO complaint. (b) (6), (b) (7)(C) complaint did not mention the EEO in any way. Her lawyer’s letter says that she had been to the EEO and they would not let her file a complaint. DePasquale reviewed the law and talked to (b) (6), (b) (7)(C) and determined it was permissible for him (DePasquale) to speak with (b) (6), (b) (7)(C) to say that “you have a problem, your EEO function did not process a complaint that (b) (6), (b) (7)(C) tried to file, please fix it, make it right.” She stated that her letter to the IC indicated this happened on or about April 11, 2018.

IG Wertheimer recalled testifying before Congress in 2018. She responded to a number of questions about her discussions with Director Watt. She was not aware of any information being leaked and did not believe she disclosed any information from (b) (6), (b) (7)(C) complaint to Director Watt.

IG Wertheimer explained she did not have an independent recollection of her testimony to Congress regarding discussions with FHFA officials.

IG Wertheimer did not recall any discussions that she had with anyone other than Director Watt and his team.

IG Wertheimer did not know if there were any discussions about (b) (6), (b) (7)(C) complaint with FHFA officials.

IG Wertheimer explained that DePasquale never discussed (b) (6), (b) (7)(C) whistleblower complaint with any FHFA officials so there was nothing to disclose about it. The whistleblower complaint did not mention the EEO complaint. EEOs do not come through the hotline. (b) (6), (b) (7)(C) took her EEO complaint to the FHFA EEO Office. IG Wertheimer explained that she did not know if the EEO complaint and the whistleblower complaint looked the same because she never saw the EEO complaint. (b) (6), (b) (7)(C) lawyer’s letter to (b) (6), (b) (7)(C), dated April 4, 2018, explained that (b) (6), (b) (7)(C) went to the EEO Office and tried to file a complaint about discriminatory hiring practices, and they refused to allow her to file it. DePasquale

²² EEO.

²³ Exhibit 15.

spoke to [REDACTED] only about the EEO complaint and not any anonymous complaint that came through the hotline.

When discussing the completeness of her testimony to Congress, IG Wertheimer explained that DePasquale told her that he only spoke to [REDACTED] about the failure to process her EEO complaint and asked him to make sure he allowed her to file it. It was not about her anonymous whistleblower complaint, he said he did not raise that with [REDACTED]. Therefore, it was not part of the discussion with Congress.

IG Wertheimer explained that her understanding of the questions being asked by Representative Maxine Waters, and others, was about who told anyone at FHFA that [REDACTED] had filed a whistleblower complaint with the OIG. IG Wertheimer explained that she was the one who told Watt [REDACTED] identity, she “owned it,” and explained why. She stated that “you may not agree with me, whatever differences we have, I believed then, and now, DePasquale never disclosed to [REDACTED] that [REDACTED] filed a whistleblower complaint.” She stated, “I didn’t see Congress’ questions asking for that information.” She thought she answered Congress’ questions clearly then. She and DePasquale reviewed the transcript and he never suggested that she left anything out.

SUMMARY OF EVIDENCE OBTAINED

HHS-OIG was provided the following information from the CIGIE IC:

- USPS Investigative Summary Memorandum (ISM) of Allegations of Harassing Conduct,²⁴ dated August 13, 2018;²⁵
- FDIC OIG Referral to CIGIE IC dated August 30, 2018;²⁶
- [REDACTED] communications and complaint submission to the IC Working Group in September 2018;²⁷

²⁴ Exhibit 1a.

²⁵ On September 21, 2018, [REDACTED] provided the IC Working Group with a redacted copy of the USPS ISM in support of her allegations. The USPS ISM is a summary of the USPS Report of Investigation into [REDACTED] allegations of harassing conduct by FHFA officials. The USPS ISM contains a detailed chronology of [REDACTED] allegations of misconduct by FHFA officials. The ISM also contains [REDACTED] narrative in relation to the disclosure of her identity and her anonymous complaint to senior agency officials without her consent (identified as Claim #4); however, this matter was not investigated by the USPS contract investigator. Under the Statement of Claims and Issues to be Investigated section of the ISM, the USPS contract investigator stated, “The investigator does not believe that FHFA’s internal policy regarding harassing conduct conveys authority to investigate the conduct of the FHFA-OIG.” The USPS ISM listed several documents as attachments to the report, which included documentation regarding the disclosure of [REDACTED] identity and anonymous complaint; however, there were no attachments to the ISM.

²⁶ Exhibit 5.

²⁷ Exhibit 6.

- Transcript from the Hearing before the (b) (6), (b) (7)(C), U.S House of Representatives (b) (6), (b) (7)(C),²⁸
- FHFA-OIG Report of Administrative Inquiry into Allegations of Misconduct by FHFA Director Watt dated November 29, 2018;²⁹
- Chief Counsel DePasquale’s written submission to the CIGIE IC (via DePasquale’s counsel, Brownell Landrigan, PC) dated December 3, 2018;³⁰ and
- IG Wertheimer’s written submission to the CIGIE IC (via IG Wertheimer’s counsel, Williams & Connolly LLP) dated December 3, 2018.³¹

Review of Relevant Evidence

On March 19, 2018, (b) (6), (b) (7)(C) filed an anonymous complaint (b) (6), (b) (7)(C) via the FHFA-OIG Hotline. Copies of (b) (6), (b) (7)(C) anonymous complaint were obtained from Chief Counsel DePasquale’s submission to the IC and IG Wertheimer’s submission to the IC. Chief Counsel DePasquale and IG Wertheimer both have copies of what appear to be an email from (b) (6), (b) (7)(C), wherein (b) (6), (b) (7)(C) complaint is listed as an email. (b) (6), (b) (7)(C) request for confidentiality is reflected on the first page. IG Wertheimer’s exhibit also contains what appears to be a printout of the complaint form. This record reflects a file dated April 10, 2018, and File Name: (b) (6), (b) (7)(C) -Referral-letter-sent-to-(b) (6), (b) (7)(C)-attorneywith-the-incorrect-Hotline-No.pdf. The record also reflects that an Approving Supervisor signed the final action date as April 11, 2018.³²

By letter dated March 27, 2018, (b) (6), (b) (7)(C), recommended Attorney (b) (6), (b) (7)(C) contact EEO (b) (6), (b) (7)(C).³³ (b) (6), (b) (7)(C) stated:

The Federal Housing Finance Agency, Office of Inspector General (FHFA OIG), received correspondence from your client, (b) (6), (b) (7)(C), dated July 27, 2017.³⁴

Regarding complaints filed with the Hotline, FHFA OIG takes seriously all information provided to us, and we vigorously pursue those persons or entities, whether inside or outside of government, where there are allegations of waste, fraud, or abuse of government monies or resources relating to programs and operations of FHFA.

The information provided by (b) (6), (b) (7)(C) to the FHFA OIG was carefully reviewed by our office. Based on our review, we recommend that (b) (6), (b) (7)(C) contact (b) (6), (b) (7)(C) EEO for FHFA, as they have established a policy to address some of the matters associated with the complaint.

²⁸ Exhibit 7.

²⁹ Exhibit 1a.

³⁰ Exhibit 1a.

³¹ Exhibit 1a.

³² Exhibit 4 and 4a: (b) (6), (b) (7)(C) anonymous complaint dated March 19, 2018.

³³ Exhibit 9: (b) (6), (b) (7)(C) letter to (b) (6), (b) (7)(C) dated March 27, 2018.

³⁴ (b) (6), (b) (7)(C) noted the July 27, 2017, date was incorrect. (b) (6), (b) (7)(C) filed her anonymous complaint on March 19, 2018.

The Record of Evidence section of the USPS ISM reflects the same correspondence from (b) (6), (b) (7)(C); however, the recipient's name is redacted.³⁵

By letter dated April 4, 2018, Attorney (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) that while the EEO has the authority to investigate allegations of discriminatory harassment, FHFA-OIG would be the appropriate office to investigate misconduct involving FHFA employees.³⁶ Attorney (b) (6), (b) (7)(C) also stated that the EEO Office informed (b) (6), (b) (7)(C) that she cannot pursue EEO counseling over the instant matter unless she is able to specifically identify the alleged discriminator, which she could not do, since only the OIG had knowledge of the individuals involved in lodging the false complaints against (b) (6), (b) (7)(C). Attorney (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) office reconsider its decision not to investigate (b) (6), (b) (7)(C) complaints.

The Record of Evidence section of the USPS ISM reflects identical correspondence to (b) (6), (b) (7)(C); however, the sender's name is redacted.³⁷

By email dated April 18, 2018, (b) (6), (b) (7)(C), contacted Attorney (b) (6), (b) (7)(C).³⁸ (b) (6), (b) (7)(C) stated:

Thank you for your letter of April 4, 2018. Kindly note, first, that (b) (6), (b) (7)(C) complaint remains open and under review at FHFA-OIG and, second, that we do not know the identity of the anonymous individual or individuals who filed complaints regarding the job vacancy for (b) (6), (b) (7)(C). With respect to (b) (6), (b) (7)(C) allegations of discriminatory harassment, we believe that the FHFA EEO Office should promptly and fully investigate that matter in the first instance. We write to ask whether your client will provide us with a written waiver of anonymity and confidentiality so we my [sic] speak with the necessary FHFA officials and urge them to proceed. To be clear, if your client waives anonymity and confidentiality and the OIG discusses the matter with FHFA, (b) (6), (b) (7)(C) identity will be disclosed to FHFA. Please advise us at your earliest convenience whether (b) (6), (b) (7)(C) will waive anonymity and confidentiality in writing.

In response, on April 19, 2018, Attorney (b) (6), (b) (7)(C) advised that she would discuss with (b) (6), (b) (7)(C) and get back to him.³⁹

The Record of Evidence section the USPS ISM reflects that the same correspondence was emailed from (b) (6), (b) (7)(C) to Attorney (b) (6), (b) (7)(C) on April 18, 2018.⁴⁰

Additionally, the Record of Evidence section of the USPS ISM contains the following in relevant part:

³⁵ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 69 of 73.

³⁶ Exhibit 11: Counsel (b) (6), (b) (7)(C) letter to (b) (6), (b) (7)(C) dated April 4, 2018.

³⁷ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 69 of 73 and page 70 of 73.

³⁸ Exhibit 12: (b) (6), (b) (7)(C) email to Counsel (b) (6), (b) (7)(C) dated April 18, 2018.

³⁹ Exhibit 13: Counsel (b) (6), (b) (7)(C) response to (b) (6), (b) (7)(C), dated April 19, 2018.

⁴⁰ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 70 of 73 and page 71 of 73.

On March 30, 2018, (b) (6), (b) (7)(C) emailed [redacted] regarding her complaint. (b) (6), (b) (7)(C) noted a conversation with (b) (6), (b) (7)(C) that she believed warranted action on their end.⁴¹ During their one-on-one meeting, (b) (6), (b) (7)(C) made reference to hearing information through the grapevine about the selection process for the vacant position that (b) (6), (b) (7)(C) was selected to fill. (b) (6), (b) (7)(C) also stated in part:

I understand your prior advice to wait, but I am not comfortable with that given that my allegation to the OIG did not get forwarded to the Agency as per their normal protocol). I'd like to take advantage of either the EEO process or the Anti Harassment process to ensure my complaint is known at the Agency. My thoughts are as follows: 1 - push back with the OIG to investigate allegation #1, OR 2 make the EEO complaint and Harassment complaint.

On April 19, [redacted], wrote, "Please see email below – from OIG. Did you have the conversation with your supervisor about requesting admin leave?"⁴²

May 1, From (b) (6), (b) (7)(C):⁴³

Please ask the OIG to proceed with discussing matter [redacted] 1 only with FHFA for investigation. Given the nature of the allegation [sic], I am unclear why my release of anonymity [sic] is needed? Have they requested the same of the individuals who filed the complaints? I see no need for my identity to be revealed. Please copy me on this response to the OIG. Please ask them to clarify why the release of anonymity [sic] is needed - it seems to be counter to the practice and intent of anonymous complaints. Also, the delay in pursuing this matter is disturbing and begs the question "why is this taking so long?" - I would like that conveyed to the OIG as well.

HHS-OIG investigators did not identify any additional correspondence from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) counsel, or FHFA in relation to (b) (6), (b) (7)(C) decision not to waive her right to anonymity. (b) (6), (b) (7)(C) Declaration Testimony in the USPS ISM cites that she declined to waive her right to anonymity.⁴⁴

On (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) testified before the House (b) (6), (b) (7)(C).⁴⁵ In addition to (b) (6), (b) (7)(C) testimony about former FHFA Director Watt, (b) (6), (b) (7)(C) also testified about the disclosure of her identity and her anonymous EEO complaint by FHFA officials. (b) (6), (b) (7)(C) stated in part, "on March 27th, prior to filing the EEO complaint, but when I had filed the complaint with the OIG, they asked if I would wave my right to anonymity, I declined to wave my right to anonymity."

⁴¹ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 71 of 73. The evidence indicates that the email appears to be from (b) (6), (b) (7)(C) to Counsel (b) (6), (b) (7)(C) on March 30, 2018. (b) (6), (b) (7)(C) provided instructions for how she planned to proceed given FHFA-OIG's decision to not investigate her complaint (b) (6), (b) (7)(C).

⁴² Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 71 of 73. The evidence indicates that the email appears to be from Counsel (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) on April 19, 2018, regarding (b) (6), (b) (7)(C) email of April 18, 2018.

⁴³ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 71 of 73. The evidence indicates that the email appears to be from (b) (6), (b) (7)(C) to Counsel (b) (6), (b) (7)(C) on May 1, 2018. (b) (6), (b) (7)(C) provided instructions for how she planned to proceed given FHFA-OIG's decision to not investigate (b) (6), (b) (7)(C) complaint.

⁴⁴ Exhibit 10: Excerpt from USPS ISM (b) (6), (b) (7)(C) ISM page 65 of 73.

⁴⁵ Exhibit 7: (b) (6), (b) (7)(C) Congressional Testimony, (b) (6), (b) (7)(C), page 21.

On (b) (6), (b) (7)(C), IG Wertheimer testified before the House (b) (6), (b) (7)(C)
46 IG Wertheimer stated in part:

We got a letter from her then counsel on April 4, saying the EEO office, FHFA had rejected her claim. I was quite concerned about that because these are EEO issues, they facially sounded quite intensely serious to me. EEO has a pretty short timeline. I felt that appropriate for the EEO office to deal with it. (b) (6), (b) (7)(C) had already identified herself and her complaint to the EEO office. What I said to [the FHFA] Director was very simple. We've gotten a complaint, that complaint is from (b) (6), (b) (7)(C) who previously made it to the EEO office which rejected it and -- and frankly, sir, you need to do your job and tell the EEO office [to process the complaint]. It wasn't until July that anyone in my office became aware of any claims of (b) (6), (b) (7)(C), which had nothing to do with our prior work.

On December 3, 2018, Chief Counsel DePasquale submitted responses to the IC's request for information via his counsel Brownell Landrigan, PC.⁴⁷ In response to the allegation that he provided information to FHFA regarding (b) (6), (b) (7)(C) anonymous hotline complaints alleging harassment and discrimination, Chief Counsel DePasquale acknowledged that (b) (6), (b) (7)(C) sought anonymity for her complaint. Chief Counsel DePasquale stated that on April 9, 2018, during a regular OIG senior staff meeting, (b) (6), (b) (7)(C) reported on the April 4, 2018, letter from (b) (6), (b) (7)(C) counsel. OIG senior staff recognized from this letter that (b) (6), (b) (7)(C) had revealed both her identity and the nature of her EEO claims to FHFA EEO staff when she sought to lodge her complaint with the FHFA EEO Office. It was determined that Chief Counsel DePasquale would speak to (b) (6), (b) (7)(C) to advise him that the FHFA needed to make sure that its EEO Office addressed (b) (6), (b) (7)(C) EEO complaint fully and appropriately for the following reasons: (1) (b) (6), (b) (7)(C) discrimination allegations on their face raised significant issues under Federal equal opportunity law and anti-discrimination law, (2) EEO claims must be brought to the Agency within a relatively short period of time, and (3) (b) (6), (b) (7)(C) had already disclosed her identity and the nature of her EEO claims to FHFA's EEO Office.⁴⁸

On April 11, 2018, Chief Counsel DePasquale advised (b) (6), (b) (7)(C) that FHFA needed to make sure that its EEO Office addressed (b) (6), (b) (7)(C) EEO complaint fully and appropriately. Chief Counsel DePasquale did not disclose to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had filed a hotline complaint or the specific allegations contained in her complaint, or the specific details contained in her counsel's letter to OIG beyond that the Agency refused to accept her claim. Per Chief Counsel DePasquale's response to the IC, these facts demonstrate that his disclosures to (b) (6), (b) (7)(C) were consistent with OIG's duties and authorities under the IG Act of 1978, as amended, 5 U.S.C. App (IG Act).⁴⁹

Chief Counsel DePasquale was asked questions by the IC regarding whether or not he, or anyone in his office, ever provided information about (b) (6), (b) (7)(C) allegations or investigation to senior agency officials and whether or not the agency official requested the information. In response, Chief

⁴⁶ Exhibit 7: IG Wertheimer's Congressional Testimony, (b) (6), (b) (7)(C), page 33.

⁴⁷ Exhibit 14: Chief Counsel DePasquale's response to the IC dated December 3, 2018.

⁴⁸ Exhibit 14: Chief Counsel DePasquale's response to the IC dated December 3, 2018, page 13.

⁴⁹ Exhibit 14: Chief Counsel DePasquale's response to the IC dated December 3, 2018, pages 13 and 14.

Counsel DePasquale noted that he informed (b) (6), (b) (7)(C) that FHFA's EEO Office improperly refused to take an EEO complaint from (b) (6), (b) (7)(C). Chief Counsel DePasquale reported that he was aware that IG Wertheimer had provided similar information to the FHFA Director during a regularly scheduled meeting on April 25, 2018. Chief Counsel DePasquale also reported that IG Wertheimer had explained the circumstances that led to that disclosure during a hearing before the House (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C).

Chief Counsel DePasquale's submission included 23 attachments of supporting documentation that pertained to the other allegations of misconduct. Attachment 5 contained a copy of (b) (6), (b) (7)(C) anonymous complaint ((b) (6), (b) (7)(C)) dated March 19, 2018.

On December 3, 2018, IG Wertheimer submitted responses to the IC's request for information via her counsel Williams & Connolly LLP.⁵⁰ IG Wertheimer was asked questions regarding the disclosure of (b) (6), (b) (7)(C) identity and her request to remain anonymous.

In response, IG Wertheimer noted that the allegation that she, or someone from her office, disclosed (b) (6), (b) (7)(C) identity without her consent in violation of section 7(b) of the IG Act rests on the assumption that (b) (6), (b) (7)(C) identity and her Title VII claims were unknown to FHFA. IG Wertheimer further explained that this assumption was incorrect, and that section 7(b) of the IG Act imposes an absolute bar to disclosure of the identity of a complainant, which, she stated, is inaccurate. Per IG Wertheimer's response, the limited disclosure of information, both by Chief Counsel DePasquale and IG Wertheimer, was appropriate and authorized by the IG Act.⁵¹

IG Wertheimer stated that according to (b) (6), (b) (7)(C) complaint, the alleged misconduct caused FHFA to have a disproportionate number of white executives (of 43 executives, only 5 were African American females). (b) (6), (b) (7)(C) complaint raised no allegations of misconduct by FHFA-OIG- employees.

In support of her actions, IG Wertheimer reported that while (b) (6), (b) (7)(C) asked for anonymity in the hotline complaint she filed on March 19, 2018, she subsequently disclosed both her identity and her Title VII claims to FHFA senior officials in early April 2018, on her own initiative, before FHFA-OIG communicated any information to anyone at FHFA. IG Wertheimer reported that by early April 2018, FHFA-OIG understood that (b) (6), (b) (7)(C) had disclosed both her identity and her Title VII claims to FHFA officials.

IG Wertheimer stated:

An April 4, 2018, letter from counsel to (b) (6), (b) (7)(C) to FHFA OIG recognized that FHFA's EEO office had the authority to investigate "discriminatory harassment" allegations but

⁵⁰ Exhibit 15: IG Wertheimer's response to the IC dated December 3, 2018.

⁵¹ Exhibit 15: IG Wertheimer's response to the IC dated December 3, 2018, page 12.

argued that FHFA OIG “would be the appropriate office to investigate misconduct involving FHFA employees, possible violations of Federal Laws, regulations, rules, or policies and possible unethical activities involving employees of FHFA.”⁵²

The letter also advised that “the EEO office informed (b) (6), (b) (7)(C) that she cannot pursue EEO counseling over the instant matter unless she is able to specifically identify the alleged discriminator (which she cannot do since only the OIG has knowledge of the individual(s) involved with lodging false complaints against (b) (6), (b) (7)(C)).” According to IG Wertheimer, those statements by counsel for (b) (6), (b) (7)(C) made clear to FHFA-OIG that (b) (6), (b) (7)(C) had already disclosed her identity and complaint to FHFA’s EEO Office.

According to IG Wertheimer, given that (b) (6), (b) (7)(C) hotline claims sounded as though they fell under Title VII, by letter dated March 27, 2018, (b) (6), (b) (7)(C) recommended to (b) (6), (b) (7)(C) counsel that (b) (6), (b) (7)(C) should bring her Title VII claims to the attention of FHFA’s EEO Office. On April 9, 2018, during a regularly scheduled FHFA-OIG senior staff meeting, (b) (6), (b) (7)(C) shared the April 4, 2018, letter from (b) (6), (b) (7)(C) counsel, which made clear that (b) (6), (b) (7)(C) had disclosed both her identity and her Title VII complaint allegations to the FHFA EEO Office. Because (b) (6), (b) (7)(C) discrimination allegations, on their face, raised serious issues under Federal equal opportunity and antidiscrimination laws and because the time period in which to file such complaints with the EEO Office is relatively short, participants at that meeting determined that Chief Counsel DePasquale should speak to (b) (6), (b) (7)(C).

On April 11, 2018, after (b) (6), (b) (7)(C) had disclosed her identity and EEO complaint to FHFA’s EEO Office, Chief Counsel DePasquale alerted (b) (6), (b) (7)(C) that FHFA’s EEO Office needed to process (b) (6), (b) (7)(C) EEO complaint in a timely and appropriate manner. Chief Counsel DePasquale subsequently reported to IG Wertheimer that he had advised (b) (6), (b) (7)(C) that FHFA’s EEO Office had improperly refused to accept an EEO complaint from (b) (6), (b) (7)(C) and recommended that (b) (6), (b) (7)(C) take appropriate actions to ensure that her complaint was timely processed by FHFA’s EEO Office.

Chief Counsel DePasquale further reported to IG Wertheimer that he did not disclose the source(s) for his recommendation to (b) (6), (b) (7)(C). To the best of IG Wertheimer’s knowledge, Chief Counsel DePasquale did not disclose any of the following: (1) (b) (6), (b) (7)(C) had filed a hotline complaint with OIG; (2) any allegations in that complaint; (3) the existence of the April 4, 2018, letter from her then-counsel; or (4) the information provided by her lawyer in that letter.

In support of her actions, IG Wertheimer also reported that FHFA documents show that (b) (6), (b) (7)(C) had disclosed, or authorized the disclosure of, both her identity and the nature of her EEO claims to a number of FHFA senior officials, prior to April 25, 2018. IG Wertheimer stated that FHFA documents show that (b) (6), (b) (7)(C) spoke with (b) (6), (b) (7)(C) on April 10, 2018, regarding her complaints sounding under Title VII and that (b) (6), (b) (7)(C) sent an email to (b) (6), (b) (7)(C) on April 11, 2018, to memorialize their conversation. IG Wertheimer repeated certain statements (b) (6), (b) (7)(C) made to (b) (6), (b) (7)(C). Additionally, IG Wertheimer stated, according to (b) (6), (b) (7)(C) “the motives of the employee(s) who

⁵² Investigator Note: IG Wertheimer referenced Exhibit 24. This exhibit shows a letter from (b) (6), (b) (7)(C) counsel, Attorney (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) dated April 4, 2018. As noted above, (b) (6), (b) (7)(C) asked for (b) (6), (b) (7)(C) office to reconsider its decision to investigate (b) (6), (b) (7)(C) complaints.

lodged these false allegations against me and the frivolous use of the OIG Hotline over these false allegations have not been properly investigated.” IG Wertheimer stated, “(b) (6), (b) (7)(C) thus made the same allegations to (b) (6), (b) (7)(C) as she had raised in her hotline complaint to FHFA-OIG.”⁵³

IG Wertheimer reported that (b) (6), (b) (7)(C) forwarded his email correspondence with (b) (6), (b) (7)(C) to FHFA’s Office of Minority and Women Inclusion (OMWI)⁵⁴ and to FHFA’s EEO Office, located within OMWI.⁵⁵ (b) (6), (b) (7)(C) also forwarded (b) (6), (b) (7)(C) email, which included the same allegations she had raised in her hotline complaint to FHFA-OIG to (b) (6), (b) (7)(C) FHFA.⁵⁶

An OMWI official then provided (b) (6), (b) (7)(C) with an EEO intake form and spoke with her about filing an informal EEO complaint.

IG Wertheimer stated that FHFA-OIG had a reasonable, good faith belief that (b) (6), (b) (7)(C) voluntarily revealed both her identity and the same Title VII claims raised in her hotline complaint to several FHFA senior officials prior to April 25, 2018. IG Wertheimer also stated that she was authorized to disclose to FHFA Director Watt on April 25, 2018, that FHFA’s EEO Office had improperly declined to process (b) (6), (b) (7)(C) Title VII claims.

IG Wertheimer reported that she was aware that (b) (6), (b) (7)(C) and career professionals in the Office of Investigations (OI) determined that OI would not investigate (b) (6), (b) (7)(C) hotline complaint for the following reasons: (1) OI did not know the identity of the anonymous individual or individuals who filed complaints regarding the job vacancy for (b) (6), (b) (7)(C) and even if they had known the identity, an investigation into the complainants could be viewed as retaliation for filing complaints; and (2) OI determined that FHFA’s EEO Office should, in the first instance, investigate (b) (6), (b) (7)(C) allegations sounding in Title VII. She was also aware that (b) (6), (b) (7)(C) and her counsel had been notified of those determinations, in an email sent on April 18, 2018.^{57 58}

⁵³ Exhibit 15: Page 14 - IG Wertheimer referenced Exhibit 25 of her response to the IC. This exhibit shows (b) (6), (b) (7)(C) followup email to (b) (6), (b) (7)(C) wherein (b) (6), (b) (7)(C) had requested administrative leave or telework; as a result of her hostile work environment. (b) (6), (b) (7)(C) stated that her hostile work environment was due to the false allegations made against her through the FHFA-OIG hotline. (b) (6), (b) (7)(C) also stated, “Further, the motives of the employee(s) who lodged these false allegations against me and the frivolous use of the OIG Hotline over these false allegations have not been properly investigated.”

As noted in (b) (6), (b) (7)(C) interview summary above, the evidence indicates that (b) (6), (b) (7)(C) forwarded (b) (6), (b) (7)(C) email to the appropriate sources per FHFA policy and to assist (b) (6), (b) (7)(C) with her claims of harassment. Investigators did not review any evidence that would indicate (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) about her anonymous complaint or about the disclosure of her identity and her anonymous EEO complaint to senior officials. The evidence indicates that (b) (6), (b) (7)(C) was made aware of the disclosure of her identity by Director Watt on May 8, 2018.

⁵⁴ Exhibit 15: IG Wertheimer’s response to the IC, Attachment 6.

⁵⁵ Exhibit 15: IG Wertheimer’s response to the IC, Exhibit 28.

⁵⁶ Exhibit 15: IG Wertheimer’s response to the IC, Exhibit 27.

⁵⁷ Exhibit 15: IG Wertheimer’s response to the IC, Exhibit 4.

⁵⁸ IG Wertheimer referenced Exhibit 4 of her response to the IC. As previously noted, (b) (6), (b) (7)(C) email was sent to Attorney (b) (6), (b) (7)(C) on April 18, 2018, subsequent to (b) (6), (b) (7)(C) communications with Attorney (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) advised Attorney (b) (6), (b) (7)(C) that first, (b) (6), (b) (7)(C) complaint remained open and under review at FHFA-OIG and, second, they did not know the identity of the anonymous individual or individuals who filed complaints regarding the job vacancy for (b) (6), (b) (7)(C). With respect to (b) (6), (b) (7)(C)

From IG Wertheimer's view, (b) (6), (b) (7)(C) allegations of harassment and disparate treatment of African American female employees warranted investigation by FHFA's EEO function. IG Wertheimer understood that Federal anti-discrimination and anti-harassment laws imposed fairly short time limits for a complainant to file an EEO complaint, and was aware, from representations made by (b) (6), (b) (7)(C) counsel, that (b) (6), (b) (7)(C) efforts to file such a complaint with FHFA's EEO Office had been rebuffed. Wertheimer grew concerned that (b) (6), (b) (7)(C) EEO complaint was at risk of becoming time barred, unless FHFA permitted her to file her informal EEO complaint.

According to IG Wertheimer, pursuant to section 4(a)(5) of the IG Act, FHFA-OIG has both the duty and responsibility to bring to Director Watt's attention the fact that the Agency's EEO function had turned away (b) (6), (b) (7)(C) Title VII claims.

IG Wertheimer reported that on April 25, 2018, during a regularly scheduled meeting with Director Watt, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), IG Wertheimer notified Director Watt that FHFA's EEO Office had improperly declined to accept an informal EEO complaint that (b) (6), (b) (7)(C) sought to file in person, and that, as head of the Agency, he should instruct the EEO Office, which reported to him through OMWI, to reach out to (b) (6), (b) (7)(C) and investigate her complaint.

According to IG Wertheimer, when she made that recommendation to Director Watt, she had a reasonable, good faith belief that (b) (6), (b) (7)(C) had already revealed her identity and her claims within FHFA. She did not provide Director Watt with any information about the specific allegations in (b) (6), (b) (7)(C) hotline complaint or a copy of her complaint, nor did she provide any other FHFA employee with any information about the allegations raised by (b) (6), (b) (7)(C) or a copy of her allegations. As stated by IG Wertheimer, because (b) (6), (b) (7)(C) had previously sought to file her EEO complaint, and had discussed her claims, orally and in writing, with (b) (6), (b) (7)(C) who in turn, had raised them with FHFA's Office of General Counsel, OMWI, and Human Resources, (b) (6), (b) (7)(C) had no credible expectation of anonymity.

IG Wertheimer reported that section 7(b) of the IG Act, authorizes an IG to disclose the identity of an anonymous complainant without the consent of the complainant if the IG determines that such disclosure would be "unavoidable during the course of the investigation." Even assuming that (b) (6), (b) (7)(C) had some anonymity to protect, which IG Wertheimer believed she did not, IG Wertheimer made the determination that disclosure of (b) (6), (b) (7)(C) identity and claims, which were

allegations of discriminatory harassment, they believed that the FHFA EEO Office should investigate the matter. (b) (6), (b) (7)(C) stated, "We write to ask whether your client will provide us with a written waiver of anonymity and confidentiality so we may speak with the necessary FHFA officials and urge them to proceed. (b) (6), (b) (7)(C) stated, to be clear, if your client waives anonymity and confidentiality and the OIG discusses the matter with FHFA, (b) (6), (b) (7)(C) identity will be disclosed to FHFA." In response, on April 19, 2018, Attorney (b) (6), (b) (7)(C) advised that she would discuss with (b) (6), (b) (7)(C) and get back to him.

(b) (6), (b) (7)(C) also stated that they wrote to ask whether her client (b) (6), (b) (7)(C) will provide FHFA-OIG with a written waiver of anonymity and confidentiality so they may speak with the FHFA officials and urge them to proceed. (b) (6), (b) (7)(C) explained that if (b) (6), (b) (7)(C) waives anonymity and confidentiality and the OIG discloses the matter with FHFA, (b) (6), (b) (7)(C) identity will be disclosed to FHFA. (b) (6), (b) (7)(C) requested that Attorney (b) (6), (b) (7)(C) respond at her earliest convenience.

already known to FHFA, would be “unavoidable” during the course of any investigation. According to IG Wertheimer, pursuant to section 7(b) of the IG Act, she was authorized to disclose (b) (6), (b) (7)(C) identity to Director Watt.

INVESTIGATIVE FINDINGS

Allegation #1 Whether Chief Counsel DePasquale abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when he disclosed (b) (6), (b) (7)(C) identity and her anonymous complaint to senior agency officials without her consent.

Due to the lack of cooperation from Chief Counsel DePasquale and FHFA-OIG, HHS-OIG was unable to independently corroborate the existing evidence, and therefore, could not make any findings on the underlying allegation that Chief Counsel DePasquale had abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when on April 11, 2018, he disclosed (b) (6), (b) (7)(C) identity and her anonymous complaint to (b) (6), (b) (7)(C), without (b) (6), (b) (7)(C) consent.

Allegation #2 Whether IG Wertheimer violated section 7(b) of the Inspector General Act of 1978 (IG Act), as amended, when she disclosed (b) (6), (b) (7)(C) identity and details about her anonymous complaint to senior agency officials without (b) (6), (b) (7)(C) consent.

HHS-OIG found that IG Wertheimer violated the IG Act when she disclosed the whistleblower’s identity to former FHFA Director Melvin Watt for reasons unrelated to the investigation of the whistleblower’s complaint and without the whistleblower’s consent. Section 7(b) of the IG Act strictly prohibits the IG’s disclosure of the identity of an agency employee who files a complaint with the OIG without their consent, unless the IG determines it is “unavoidable during the course of the investigation.” Additionally, section 8M(b)(2)(B) of the IG Act prohibits IG’s disclosure of the identity of any individual who files a complaint with the OIG Hotline without their consent, unless the IG determines it is “unavoidable during the course of the investigation.” The evidence showed that IG Wertheimer: (1) disclosed the identity of the whistleblower in a discussion with Director Watt; (2) FHFA-OIG was not conducting an investigation into the whistleblower’s complaint; and (3) IG Wertheimer notified Director Watt of the complainant’s identity because “she thought the director of the agency needed to be made aware that a complaint of some kind had been made.” Consequently, HHS-OIG found that IG Wertheimer’s disclosure was not unavoidable during the course of an investigation into the whistleblower’s complaint.

Allegation #3 Whether, on (b) (6), (b) (7)(C), IG Wertheimer engaged in conduct that undermines the independence and integrity reasonably expected of an IG by omitting from her testimony to Congress the material fact that Chief Counsel DePasquale, had disclosed (b) (6), (b) (7)(C) identity, without her consent, to FHFA’s (b) (6), (b) (7)(C) 2 weeks prior to IG Wertheimer’s disclosure of (b) (6), (b) (7)(C) identity to the FHFA Director.

HHS-OIG found that IG Wertheimer did not appear to engage in conduct that undermines the independence and integrity reasonably expected of an IG by omitting from her testimony to Congress the material fact that Mr. DePasquale had disclosed the whistleblower's identity, without her consent, to FHFA's (b) (6), (b) (7)(C) 2 weeks prior to IG Wertheimer's disclosure of the whistleblower's identity.

During IG Wertheimer's interview, she explained that DePasquale told her that he only spoke to (b) (6), (b) (7)(C) about the failure to process (b) (6), (b) (7)(C) EEO complaint and nothing about the anonymous whistleblower complaint was raised. Therefore, DePasquale's communications with (b) (6), (b) (7)(C) about the EEO was not a part of her discussion with Congress. Her understanding of the questions being asked by Representative Maxine Waters and others was about who told anyone at FHFA that (b) (6), (b) (7)(C) had filed a whistleblower complaint with the OIG. She stated that she was the one who told Watt about (b) (6), (b) (7)(C) whistleblower complaint, she "owned it," and explained why. IG Wertheimer explained that she believed then, and at the time of the interview continued to believe, that DePasquale never disclosed to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) filed a whistleblower complaint. She stated that she "didn't see Congress' questions asking for that information." She thought she answered Congress' questions clearly at the time of her testimony. HHS-OIG found no evidence that suggests IG Wertheimer knowingly deceived or misrepresented Congress in her answers to questions regarding the disclosure of the whistleblower's identity.

On August 31, 2020, the CICIE IC requested that HHS-OIG investigate allegations of wrongdoing against Acting Deputy IG Parker. Specifically, the IC asked HHS-OIG to investigate whether Acting Deputy IG Parker:

1. Violated any laws or regulations in failing to cooperate in HHS-OIG's investigation.

BACKGROUND AND SUMMARY OF EVENTS

On March 30, 2020, HHS-OIG provided (b) (6), (b) (7)(C) FHFA's (b) (6), (b) (7)(C) with an HHS-OIG Request for Information for records and correspondence pertaining to the settlement agreement between FHFA and (b) (6), (b) (7)(C) as well as records and correspondence in relation to (b) (6), (b) (7)(C) complaints and subsequent investigations against Chief Counsel DePasquale, IG Wertheimer, and Director Watt. The investigator requested the documentation on or before close of business on April 17, 2020.⁵⁹

By letter dated April 1, 2020, (b) (6), (b) (7)(C) confirmed receipt of the HHS-OIG Request for Information. As stated in the letter, in order to assist FHFA in assessing and properly responding to the Request, (b) (6), (b) (7)(C) asked the investigator to clarify if the matter was a criminal investigation into FHFA or if the matter was a CIGIE IC administrative inquiry conducted pursuant to section 11(d) of the IG Act. If the matter was an administrative inquiry, (b) (6), (b) (7)(C) requested that the investigator identify the administrative inquiry's subject(s). (b) (6), (b) (7)(C) referred the investigator to FHFA (b) (6), (b) (7)(C), as FHFA-OIG is not authorized to provide documents and information on FHFA's

⁵⁹ Exhibit 25: The investigator copied (b) (6), (b) (7)(C) Office of Counsel to the Inspector General, HHS-OIG.

behalf.⁶⁰ By letter dated April 10, 2020, the investigator replied to (b) (6), (b) (7)(C) letter on April 1, 2020, regarding the HHS-OIG Request for Information.⁶¹

On April 15, 2020, (b) (6), (b) (7)(C) requested to speak with the investigator to better understand the allegations at issue and the specific materials HHS-OIG was seeking.⁶²

On April 24, 2020, the investigator and HHS-OIG officials⁶³ participated in a conference call with (b) (6), (b) (7)(C) Acting Deputy IG Parker; FHFA's Acting Deputy Inspector General for Investigations; and (b) (6), (b) (7)(C). Acting Deputy IG Parker advised that he would be assuming the role of the Acting FHFA IG in this matter, as it was necessary for IG Wertheimer to recuse herself. Acting Deputy IG Parker advised that he would require additional information concerning the allegations against IG Wertheimer and Chief Counsel DePasquale before FHFA would provide any documentation responsive to the HHS-OIG Request for Information.

The investigator confirmed that the CIGIE IC had requested HHS-OIG investigate the allegations of misconduct by IG Wertheimer and Chief Counsel DePasquale. In response to Acting Deputy IG Parker's questions about the scope of the investigation, the investigator referred to the notification letters the IC sent to IG Wertheimer and Chief Counsel DePasquale in October 2018. In reply, Acting Deputy IG Parker requested that the investigator provide FHFA with a copy of the allegations. The investigator agreed to provide Acting Deputy IG Parker with a copy of the scope of the investigation.

During the discussion, the investigator confirmed that HHS-OIG had received some documentation with the CIGIE referral. The Investigator agreed to work with (b) (6), (b) (7)(C) as to not duplicate efforts in the interest of time. Acting Deputy IG Parker stated that once they (FHFA) received the scope of the investigation they would try their best to provide the information in a timely manner. In closing, the investigator restated the need to receive any available documents such as the FHFA settlement agreement with (b) (6), (b) (7)(C) as soon as possible. In response, Acting Deputy IG Parker stated that FHFA-OIG would try its best to provide the information as soon as he received a copy of the allegations.⁶⁴

On April 28, 2020, the investigator provided Acting Deputy IG Parker with a copy of the CIGIE IC referral letter dated October 18, 2019. Given FHFA-OIG's receipt of the current scope of the investigation, the investigator requested the documentation on or before close of business May 29, 2020. On April 29, 2020, Acting Deputy IG Parker acknowledged receipt of CIGIE IC's scope of

⁶⁰ Exhibit 26: (b) (6), (b) (7)(C) copied (b) (6), (b) (7)(C)

⁶¹ Exhibit 27: The investigator copied (b) (6), (b) (7)(C)

⁶² Exhibit 28: (b) (6), (b) (7)(C) Meeting Request.

⁶³ Also present during the call were (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

⁶⁴ Exhibit 29: OI-3A HHS and FHFA Conference Call.

the investigation. He advised the investigator to contact him with any questions or concerns regarding the matter.⁶⁵

On May 1, 2020, Acting Deputy IG Parker contacted the investigator. Acting Deputy IG Parker referenced the CIGIE IC letter of October 18, 2019. He advised that in the first sentence of the first paragraph of the letter, Inspector General Scott Dahl (Dahl), the then IC Chairperson, made reference to “the allegation in our letter, dated May 20, 2019” Acting Deputy IG Parker requested a copy of the letter. After conferring with the CIGIE IC, the investigator advised Acting Deputy IG Parker that providing him with a copy of the May 2019 letter, at that time, was not necessary and could potentially confuse the issue.⁶⁶

On May 5, 2020, Acting Deputy IG Parker contacted the investigator. Acting Deputy IG Parker stated in relevant part:

As you know, I have been authorized by the Inspector General, who has recused herself from this matter, to respond on behalf of FHFA OIG to requests for information made in connection with CIGIE IC Case #971. Therefore, your March 30, 2020, Request for Information or Assistance (Request) has been directed to me.

Before I determine whether FHFA OIG may comply with your Request, it is incumbent upon me to assure myself that the Integrity Committee is currently authorized under § 11 to request information in connection with Case #971. Although you assert in your April 10, 2020, letter to (b) (6), (b) (7)(C) that “HHS-OIG has been authorized by the IC to conduct this investigation in accordance with IG Act Section 11(d) and[,] consequently[,] has statutory authority to access the requested information,” I don’t yet have enough information to conclude you are correct. Given the lengthy interval between the IC’s purported receipt of a complaint on September 4, 2018, and your recent issuance of the Request, this matter must be resolved at the outset.

Acting Deputy IG Parker asked the investigator to respond to nine questions that pertained to the IC’s review of the complaint and the IC’s decision to refer the matter for investigation.⁶⁷

By letter dated May 8, 2020, IG Dahl replied to Acting Deputy IG Parker’s request (to the investigator) for additional information. Acting Deputy IG Parker stated the following:

I received your email to the U.S. Department of Health and Human Services Office of Inspector General (HHS OIG), dated May 5, 2020, in which you request, among other items, confirmation that HHS OIG investigators are acting at the bequest of the Integrity Committee under section 11(d) of the Inspector General Act of 1978, as amended, 5 U.S.C. app. The Integrity Committee has already communicated this information to your office multiple times, and we are disturbed that you are wasting time in this investigation with your frivolous requests. FHFA OIG should forthwith cooperate fully in the investigation

⁶⁵ Exhibit 30: The investigator copied (b) (6), (b) (7)(C)

⁶⁶ Exhibit 31: Dahl copied the investigator, (b) (6), (b) (7)(C) .

⁶⁷ Exhibit 32: Parker email with questions.

and promptly provide all responsive documents and access requested by HHS OIG investigators.⁶⁸

By letter dated May 15, 2020, Acting Deputy IG Parker replied to IG Dahl's letter of May 8, 2020. Acting Deputy IG Parker stated that he had sought, and continued to seek, information about whether the actions of the IC meet the timeliness requirements of section 11(d) of the IG Act. According to Acting Deputy IG Parker, if the IG Act's deadlines have been exceeded, then the statutory authority of the IC to conduct the investigation has expired. Career attorneys in the FHFA-OIG's Office of Counsel assigned to this matter have advised him that the information is needed in order to resolve the timeliness issue.

In closing, Acting Deputy IG Parker stated:

In light of the statutory deadlines in the IG Empowerment Act, I seek the information identified in the attached correspondence, and reiterate that request here. That information is known to the IC and can be readily provided. It will provide a factual basis to determine whether the investigation of Case #971 by the IC is within the Congressionally mandated statutory deadlines. Thank you in advance for this information.⁶⁹

By letter dated May 15, 2020, the IC Working Group replied to Acting Deputy IG Parker's letter of May 15, 2020, with an attached letter from IG Dahl. IG Dahl stated:

As I said in my letter to you on May 8, 2020, FHFA OIG should immediately cooperate and promptly provide all responsive documents requested by the Integrity Committee's duly authorized investigators at HHS-OIG. This is to notify you that your failure to comply timely with the pending requests and future requests from HHS-OIG will be deemed by the IC as a refusal to cooperate and an obstruction of the IC's lawful investigation by you as a covered official, and we will proceed to address this as wrongdoing under the IG Act and the IC Policies and Procedures.⁷⁰

On May 20, 2020, the investigator reminded Acting Deputy IG Parker of HHS-OIG's request for the documentation on or before May 29, 2020. In response, on May 21, 2020, Acting Deputy IG Parker stated the following:

As I have explained in my prior correspondence, as an employee of FHFA I am bound by its nonpublic information (NPI) regulation. The information you seek from me is covered by that regulation. As it applies to your request, the regulation precludes me from releasing NPI to you unless doing so is required under the IG Act. That, in turn, requires me to determine whether your investigation into Case No. 971 is authorized under Section 11(d) thereof. I explained my reasons for believing it is not in my aforementioned correspondence, so I won't restate them here.

⁶⁸ Exhibit 33: CIGIE IC Response to Parker.

⁶⁹ Exhibit 34: Parker Response to CIGIE IC.

⁷⁰ Exhibit 35: CIGI IC response to Parker, Working Group copied (b) (6), (b) (7)(C)

I have asked three times for certain factual information with which to determine whether your investigation is still authorized under the IG Act. To date, I have not received anything from you. I hope you'll send it soon.⁷¹

By letter dated June 5, 2020, Inspector General Kevin Winters (Winters), IC Chairperson, advised Acting Deputy IG Parker that the IC viewed Acting Deputy IG Parker as the decisionmaker on this matter, and therefore subject to IC jurisdiction and IC oversight. IG Winters referenced the IC Policies and Procedures § 2(D)⁷². He stated in relevant part:

The IC expects your compliance, or unequivocal commitment to do so, by close of business, June 9, 2020. Accordingly, if such unequivocal confirmation is not received by close of business on that date, your course of conduct in this matter will be assessed for wrongdoing under the Integrity Committee Policies and Procedures. As the IC has not been specifically advised that (b) (6), (b) (7)(C), FHFA OIG (b) (6), (b) (7)(C) [REDACTED]⁷³, has been recused from this matter, we are providing a courtesy copy of this letter for her consideration.⁷⁴

By letter dated June 9, 2020, Acting Deputy IG Parker replied to Winters' letter of June 5, 2020. Acting Deputy IG Parker stated he was ready to provide information to the IC in response to its request, provided that he was authorized to do so under FHFA's non-public information (NPI) regulation. Acting Deputy IG Parker also stated in relevant part:

As I explained in my letter of May 20, 2020, FHFA's NPI regulation authorizes me to disclose covered information only to the minimum extent required by the Inspector General Act of 1978, as amended (IG Act). Unauthorized NPI disclosures are punishable both criminally and administratively. To determine whether the IG Act requires an NPI disclosure and, therefore, whether I may authorize the provision of relevant, responsive, non-privileged materials sought by the IC, I must first determine whether the IC retains authority to conduct this investigation under § 11(d) of the IG Act.

⁷¹ Exhibit 36: HHS Email Reminder, the investigator copied (b) (6), (b) (7)(C) [REDACTED], and the IC Working Group.

⁷² IC's Authority IC Policies and Procedures § 2(D)

The IC considers allegations of wrongdoing against any of the following individuals ("Covered Persons"):

A. An IG;

B. A staff member of an Office of Inspector General ("OIG") whose position is designated under section 4 of these Policies ("Designated Staff Member");

C. The Special Counsel and the Deputy Special Counsel of OSC, but not their staff members. For purposes of these Policies, requirements pertaining to an IG also apply to the Special Counsel and Deputy Special Counsel, except that the Special Counsel is not required to designate staff members under section 4 of these Policies; and

D. Anyone serving in an Acting or Interim capacity in a position set forth in A through C of this subsection.

At its discretion and consistent with the public interest (including the availability of an effective remedy), the IC may consider wrongdoing alleged to have occurred while an individual served as a Covered Person, even if that individual is no longer a Covered Person or in government service when the IC receives the allegation.

⁷³ IG Kevin Winters, IC Chairperson copied (b) (6), (b) (7)(C) FHFA-OIG (b) (6), (b) (7)(C) [REDACTED].

⁷⁴ Exhibit 37: Winters letter to Parker.

The answer to this question turns on whether your predecessor, Mr. Dahl, adhered to what he termed the “statutory deadlines” set by Congress in the IG Act. The IC’s file on Investigation No. 971 contains the answer to this question.

Acting Deputy IG Parker reported that on April 14, 2020, IG Wertheimer delegated to him the authority to provide information to the IC in connection with the investigation. She did not designate Acting Deputy IG Parker to be the Acting FHFA IG. Acting Deputy IG Parker opined that CIGIE IC’s investigative authority over him in this matter is legally meritless, as it’s predicated solely upon CIGIE IC policies and procedures but not the IG Act.⁷⁵

On July 8, 2020, the investigator asked Acting Deputy IG Parker if his delegated authority to respond on behalf of the FHFA-OIG is limited to documentary evidence or if it also included access to witnesses. In reply, on July 8, 2020, Acting Deputy IG Parker stated in relevant part, “Inspector General Wertheimer’s delegation of authority to me covers information from all sources, including information possessed by individuals.”⁷⁶

INVESTIGATIVE FINDINGS

Allegation #1 Whether Acting Deputy IG Parker violated any laws in his noncooperation during this investigation.

Viewing Parker’s noncooperation under the IG Act, HHS-OIG found that Parker’s actions impeded HHS-OIG’s investigative efforts. Parker informed HHS-OIG investigators and the IC that FHFA-OIG would not make available *any* of the documents requested by HHS-OIG in this investigation, remaining steadfast in his conviction that the IC does not have authority to conduct this investigation. Instead, Parker insisted that HHS-OIG and the IC answer a series of questions and provide documents to FHFA prior to determining whether to comply with the investigators’ requests. In sum, FHFA-OIG claimed for itself the authority to decide whether it would comply with an IC investigation.

With regard to potential criminal violations, on November 6, 2020, investigators presented Parker’s noncompliant actions to the Chief of the Public Corruption and Civil Rights Section of the U.S. Attorney’s Office for the District of Columbia. The matter was declined for criminal prosecution because there is insufficient predicate evidence of corrupt intent.

ATTACHMENTS:

The following documents are included as attachments:

Exhibit 1	CIGIE IC Complaint Referral	May 20, 2019
Exhibit 1a	CIGIE Referral Documents	
Exhibit 2	Signed Interagency Agreement and MOU	June 26, 2019
Exhibit 3	CIGIE IC Complaint Referral	October 18, 2019

⁷⁵ Exhibit 38: Parker response to Winters.

⁷⁶ Exhibit 39: HHS and FHFA emails, the investigator copied (b) (6), (b) (7)(C) . In reply, Parker copied (b) (6), (b) (7)(C)

Exhibit 4	(b) (6), (b) (7)(C) Anonymous Complaint (b) (6), (b) (7)(C)	March 19, 2018
Exhibit 4a	(b) (6), (b) (7)(C) Anonymous Complaint (b) (6), (b) (7)(C)	March 19, 2018
Exhibit 5	FDIC Referral	August 30, 2018
Exhibit 6	(b) (6), (b) (7)(C) Complaint to CIGIE IC	September 6, 2018
Exhibit 7	Congressional Testimony	(b) (6), (b) (7)(C)
Exhibit 8	FHFA (b) (6), (b) (7)(C) RE: (b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)
Exhibit 9	(b) (6), (b) (7)(C) Letter to Attorney (b) (6), (b) (7)(C)	March 27, 2018
Exhibit 10	USPS Investigative Summary	August 13, 2018
Exhibit 11	Attorney (b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C)	April 4, 2018
Exhibit 12	(b) (6), (b) (7)(C) Email to Attorney (b) (6), (b) (7)(C)	April 18, 2018
Exhibit 13	Attorney (b) (6), (b) (7)(C) Email to (b) (6), (b) (7)(C)	April 19, 2018
Exhibit 14	DePasquale Response to CIGIE IC	December 3, 2018
Exhibit 15	IG Wertheimer Response to CIGIE IC	December 3, 2018
Exhibit 16	(b) (6), (b) (7)(C) Interview Report 1	November 24, 2020
Exhibit 17	(b) (6), (b) (7)(C) Interview Report 2	February 2, 2021
Exhibit 18	(b) (6), (b) (7)(C) Interview Report	November 27, 2020
Exhibit 19	(b) (6), (b) (7)(C) Email	January 8, 2021
Exhibit 20	Melvin Watt Interview Report 1	November 30, 2020
Exhibit 21	Melvin Watt Interview Report 2	January 21, 2021
Exhibit 22	(b) (6), (b) (7)(C) Interview Report 1	December 2, 2020
Exhibit 23	(b) (6), (b) (7)(C) Interview Report 2	January 12, 2021
Exhibit 24	IG Laura Wertheimer Interview Report	April 29, 2021
Exhibit 25	HHS-OIG Request for Information	March 30, 2020
Exhibit 26	FHFA (b) (6), (b) (7)(C) Letter to HHS	April 1, 2020
Exhibit 27	HHS Letter to FHFA (b) (6), (b) (7)(C)	April 10, 2020
Exhibit 28	FHFA (b) (6), (b) (7)(C) Request to Meet	April 15, 2020
Exhibit 29	OI-3a RE: Conference Call With FHFA	April 24, 2020
Exhibit 30	HHS Email to FHFA Parker RE: Scope	April 28, 2020
Exhibit 31	FHFA Parker and HHS Email RE: Request	May 1, 2020
Exhibit 32	FHFA Parker Email RE: Questions	May 5, 2020
Exhibit 33	CIGIE IC Response to Parker Questions	May 8, 2020
Exhibit 34	FHFA Parker Response to CIGIE IC	May 15, 2020
Exhibit 35	CIGIE IC Response to Parker	May 15, 2020
Exhibit 36	HHS and Parker Email RE: Request	May 21, 2020
Exhibit 37	IG Winters Letter to Parker	June 5, 2020
Exhibit 38	Parker Letter to IG Winters	June 9, 2020
Exhibit 39	HHS and FHFA Parker Emails	July 8, 2020

If you have any questions or need any additional clarification, please contact the following Assistant Special Agent in Charge who supervised the investigation:

(b) (6), (b) (7)(C)

Assistant Special Agent in Charge
Special Investigations Branch

(b) (6), (b) (7)(C)

[Redacted]

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April 11, 2022

Via Email

Kevin H. Winters
Chair
CIGIE Integrity Committee
1717 H. Street N.W.
Washington DC 20006
c/o (b) (6), (b) (7)(C)

Re: **Laura Wertheimer -- IC Case #971**

Dear Mr. Winters:

This firm represents Laura Wertheimer, the retired Inspector General of the Federal Housing Finance Agency (“FHFA”) and head of the FHFA Office of Inspector General (“FHFA-OIG” or “the Agency”). Ms. Wertheimer responds to the preliminary findings in the draft Report of Investigation she received under a CIGIE Integrity Committee (“IC”) cover letter dated February 17, 2022.¹

The DROI “determine[s] [that] IG Wertheimer violated the IG Act when, on April 25, 2018, she disclosed [a named employee’s] identity (“the Employee”) [regarding the Employee’s] anonymous complaint to senior agency officials without [the Employee’s] consent.” Exec. Sum.

¹The February 17, 2022 draft Report of Investigation consists of the following components: (1) a cover letter addressed to counsel from CIGIE Integrity Chairperson Kevin H. Winters (“Cover Letter”); (2) an August 24, 2021 Executive Summary (“Executive Summary” or “Exec. Sum.”) prepared by the Department of Health and Human Services Office of Inspector General Office of Investigations (“HHS-OIG”); and (3) the undated Report of Investigation Regarding Federal Housing Finance Agency Senior Officials prepared by HHS-OIG Office of Investigations Special Investigations Branch (the “DROI”). The HHS-OIG personnel investigated this matter and prepared the DROI on behalf of the IC pursuant to 5 U.S.C. § 11(d)(6), and those investigators will be referred to herein as “the IC investigators.” Exhibits attached by Ms. Wertheimer to this submission are indicated by “LW Exhibit__” or “LW Ex. __.” Exhibits to the DROI are abbreviated “DROI Exhibit__” or DROI Ex. __.”

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at 3. Her conduct is asserted to have violated Section 7(b) of the IG Act which provides that “[t]he Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable in the course of the investigation.” 5 U.S.C. App. §7(b).

As we show in this submission, the DROI’s findings are wrong and its analysis is somewhere between fatally incomplete and nonexistent. The DROI’s errors derive from a refusal to acknowledge that, at the time of Ms. Wertheimer’s “disclosure” of the Employee’s identity, the Employee’s name had already been disclosed, *by the Employee herself*, to the EEO office and senior officials within FHFA with respect to the discriminatory harassment allegations the Employee filed with FHFA-OIG and with FHFA. It follows that Ms. Wertheimer did not “disclose” the Employee’s identity to anyone or in any manner forbidden by law. The DROI’s findings also failed even to consider two facts of critical legal significance.

- First, even assuming, incorrectly, that the Employee’s identity was anonymous when Ms. Wertheimer disclosed it to Director Watt, the IG Act commits to the exclusive discretion of an Inspector General, a determination whether disclosure was “unavoidable,” and Ms. Wertheimer, FHFA’s then-Inspector General, made that determination pursuant to the statute. Her disclosure was therefore within the law.
- Second, the DROI contains no analysis at all of the uncontested fact that Ms. Wertheimer acted at the direction, and upon the advice, of FHFA-OIG’s Chief Counsel, when she determined to disclose the Employee’s identity to Director Watt.

Any one of the foregoing reasons serves as a complete defense to the accusation against her.

I. Chronology of Key Facts

The core facts implicated by the accusation against Ms. Wertheimer are set forth in this chronology:

- | | |
|----------------|---|
| March 19, 2018 | Employee files an anonymous hotline complaint with the FHFA OIG, alleging (i) interference with an FHFA promotion decision and (ii) discriminatory harassment within FHFA (“the Hotline Discrimination Complaint”), DROI Ex. 15-2 at 968-170; |
| March 27, 2018 | FHFA-OIG writes to Employee’s counsel advising her of the need to assert her discriminatory harassment claim in an FHFA EEO proceeding, DROI Ex. 9. |

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- Late Mar-Early Apr Employee attempts to assert her discriminatory harassment complaint by initiating the FHFA EEO counseling/complaint process (“the EEO Discrimination Complaint”)²; FHFA EEO office refuses to accept the EEO Discrimination Complaint for filing, and (erroneously) informs Employee that FHFA-OIG is the appropriate office to investigate her discriminatory harassment claims; DROI Ex. 11.
- April 4, 2018 Employee’s counsel notifies FHFA-OIG (b) (6), (b) (7)(C) in writing that FHFA’s EEO office has refused to accept Employee’s EEO Discrimination Complaint, *id.* This (erroneous) rejection of Employee’s Complaint by FHFA EEO Office meant that its merits were not considered either by the FHFA EEO Office or by FHFA-OIG (which does not investigate discrimination claims), DROI Ex. 11
- April 9, 2018 FHFA-OIG (b) (6), (b) (7)(C) informs FHFA-OIG Chief Counsel of the Employee’s Counsel April 4 letter stating that the Employee’s EEO Discrimination Complaint had been refused by FHFA EEO Office, DROI Ex. 15 at 13.
- April 10-13, 2018 Employee communicates with FHFA (b) (6), (b) (7)(C) (orally and by email) relating to her discriminatory harassment issue (*i.e.*, the substance of both her FHFA-OIG and FHFA Discrimination Complaints), DROI Ex. 15 at 14; *see also* DROI Exs.15-5, 15-6 and 15-25 to 15-27.
- April 11, 2018 FHFA-OIG Chief Counsel informs FHFA (b) (6), (b) (7)(C) that FHFA’s EEO office refused to allow Employee to file her discriminatory harassment complaint and that office was obligated to process it, DROI Ex. 15 at 13; FHFA EEO office takes no action to assure that Employee can proceed with her discriminatory harassment complaint through the EEO process.

² The Hotline Discrimination Complaint and the EEO Discrimination Complaint, which involved discriminatory harassment against African-Americans in connection with FHFA promotion decisions, are referred to collectively as “the Discrimination Complaints.” The Employee also made a third complaint, alleging (b) (6), (b) (7)(C) by the FHFA Director personally, in late May 2018, approximately one month after the last event at issue in this matter. The third complaint, and the events underlying it, are not at issue here. Ms. Wertheimer and FHFA-OIG first became aware of this third complaint in early July 2018 as a result of emails sent by the Employee to FHFA staff. On the April 25, 2018 date Ms. Wertheimer notified the Director of the Discrimination Complaints, she was unaware that the Employee had experienced (b) (6), (b) (7)(C) and was considering making such allegations against the FHFA Director.

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April 23/24, 2018 FHFA-OIG Chief Counsel advises Ms. Wertheimer of the following: that Employee's discriminatory harassment allegations would not be investigated by FHFA-OIG because of lack of expertise; that such allegations needed to be investigated by the FHFA EEO office; that the Employee had attempted to file a substantively identical Discrimination Complaint with the FHFA EEO office and that it had refused to accept it for filing; that Ms. Wertheimer had a legal duty under the law to notify Director Watt that the FHFA EEO office had refused to file Employee's EEO Discrimination Complaint; that Employee was running out of time to file the EEO Discrimination Complaint; that an EEO complaint by its very nature could not be handled anonymously and that, in any case, disclosure of the Employee's name was "unavoidable"; and that the Employee's identity was already known within FHFA precisely because Employee had attempted to file her EEO Discrimination Complaint and because she had also been talking to senior officials in FHFA management about her EEO Discrimination Complaint,³ LW Ex. 1, LW Tr. at 10-11; *see also* DROI Ex. 15 at 15-16;

April 25, 2018 During a regularly scheduled meeting with Director Watt, Ms. Wertheimer informs him that Employee attempted to file an EEO Discrimination Complaint substantively identical to her FHFA-OIG Hotline Discrimination Complaint; that, given the substance of her Discrimination Complaints, her claim could only be addressed by the FHFA EEO office; that it had been improperly rejected by the FHFA EEO office, and that FHFA, under his supervision, was obligated to investigate it, Ex. 15 at 15.

II. Ms. Wertheimer Did Not Violate the IG Act When She Disclosed the Complaining Employee's Identity to the Director and the DROI's Investigative Findings to the Contrary Are Erroneous and Omit Critical Information.

This is the complete text of the DROI's "Investigative Findings" against Ms. Wertheimer:

[A] HHS-OIG found that IG Wertheimer violated the IG Act when she disclosed the whistleblower's identity to former FHFA Director Melvin Watt for reasons unrelated to the investigation of the whistleblower's complaint and without the whistleblower's consent. [B] Section 7(b) of the IG Act strictly prohibits the IG's disclosure of the identity of an agency employee who files a complaint with the OIG without their consent, unless the IG determines it is "unavoidable during the course of the

³ Ms. Wertheimer's April 29, 2021 investigative interview is attached as Exhibit 1 to this submission and references to it are cited as "LW Tr. ___."

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investigation.” Additionally, section 8M(b)(2)(B) of the IG Act prohibits IG’s disclosure of the identity of any individual who files a complaint with the OIG Hotline without their consent, unless the IG determines it is “unavoidable during the course of the investigation.” The evidence showed that IG Wertheimer: (1) disclosed the identity of the whistleblower in a discussion with Director Watt; (2) FHFA-OIG was not conducting an investigation into the whistleblower’s complaint; and (3) IG Wertheimer notified Director Watt of the complainant’s identity because “she thought the director of the agency needed to be made aware that a complaint of some kind had been made.” Consequently, HHS-OIG found that IG Wertheimer’s disclosure was not unavoidable during the course of an investigation into the whistleblower’s complaint.

DROI at 20 (square brackets added). *These findings are erroneous and omit critical information.*

[A] HHS-OIG found that IG Wertheimer violated the IG Act when she disclosed the whistleblower’s identity to the former FHFA Director for reasons unrelated to the investigation of the whistleblower’s complaint and without the whistleblower’s consent.

Response: The provisions of the IG Act on which the DROI relies involve only the protection of *anonymous* whistleblowers. The DROI does not analyze, consider, or make any effort to come to terms with this critical fact: the Employee’s identity in connection with allegations of discriminatory harassment was already known within FHFA before Ms. Wertheimer spoke with the FHFA Director on April 25, 2018 because of actions taken by the Employee within FHFA to disclose her identity.⁴

The uncontroverted evidence in this record shows this. There were two complaints made, and the legal substance was identical in both the Hotline Discrimination and the EEO Discrimination Complaints. As Ms. Wertheimer testified, *the discrimination allegations contained in both the Hotline and EEO Complaints* were substantively the same. Ex. 1, LW Tr. at 7, 10. And the complaining “persons” were also identical—both were made by the same Employee.

⁴ The DROI includes an excerpt from an April 19, 2018 email in which a mid-level FHFA-OIG employee wrote to the Employee’s counsel, seeking a waiver of confidentiality from the Employee so as to allow FHFA-OIG to speak with FHFA officials and urge them to move forward with the EEO Complaint. DROI Ex. 10. That email was unnecessary and ineffective when sent (it was sent 2-3 weeks *after* the Employee had disclosed her name when filing the EEO Complaint). And there is no evidence that Ms. Wertheimer authorized it (she did not) or was otherwise aware of it at the time (she was not). Still, it is unsurprising that a mid-level FHFA-OIG employee sought a waiver of confidentiality from the Employee. Unlike Ms. Wertheimer, the then-FHFA Inspector General, other FHFA-OIG employees did not have statutory discretion under the IG Act to disclose the name of an individual who has sought anonymity even in the circumstance in which such employees believed the disclosure was unavoidable.

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EEO complaints are not anonymous. *See* 29 U.S.C §1614.106(c) (“Complaint must contain a signed statement from the person claiming to be aggrieved or that person’s attorney”). Unlike FHFA-OIG Hotline complaints, an employee who seeks to file an EEO complaint must provide his or her name. *See id.* (“statement must be sufficiently precise to identify the aggrieved individual”).

The DROI’s own “Review of the Evidence” section clearly states that “OIG senior staff recognized [from the April 4, 2018 letter from the Employee’s counsel] that [the Employee] had revealed both her identity and the nature of her EEO claims to FHFA staff when she sought to lodge her complaint with the FHFA EEO Office.” DROI at 15; *see also* DROI Ex. 11 at 971-247 (EEO office turned away Employee’s EEO Complaint on or before April 4, 2018); DROI at 7 (FHFA EEO employee “advised [the Employee] that the EEO office could not investigate her complaint unless she could identify the person who had made the complaint”); DROI Ex. 14, at 971-279 (because “[Employee] had already disclosed her identity and the nature of her EEO claims to FHFA’s EEO office, it was determined that [the Chief Counsel] would speak to FHFA’s [REDACTED] to advise him that the FHFA needed to make sure that its EEO office addressed [the Employee’s] complaint”). The Employee had also discussed the substance of her Discrimination Complaints with FHFA senior management (the agency’s [REDACTED] [REDACTED]) in conversation and emails in the period April 10-13, 2018. DROI Ex. 15 at 14. [REDACTED] (b) (6), (b) (7)(C) was responding to the Employee’s request for extended leave or telework. DROI Ex. 15-26 at 971-254 and [REDACTED] (b) (6), (b) (7)(C), in turn, discussed the issues with FHFA’s OGC, OMWI and Humans Resources function. DROI Exs. 15-25 & 15-26.

During the period April 4, 2018 through April 24, 2018, the Employee disclosed her name and the substance of her discriminatory harassment allegations—both in the course of attempting to file an EEO Complaint and in discussions with senior FHFA management personnel. *She had unmasked herself* as the source of the discriminatory harassment allegations. It is well-established in law – across a host of situations – that confidential information loses its protected character once it has been disclosed. *See e.g., Diamond Ventures LLC v. Barreto*, 452 F.3d 892, 897 (D.C. Cir. 2006) (once the information is disclosed, applicant’s confidentiality interest is permanently lost) (applicant for aid under SBA program); *United States v. Burks*, 470 F.2d 432, 437 (D.C. Cir. 1972) (communication otherwise privileged loses its privileged character on coming into the hands of a third party) (marital communications privilege); *West Bay One, Inc. v. Does 1-1653*, 270 F.R.D. 13, 14-15 (D.D.C. 2010) (same) (internet service provider customer identification).

Once the Employee disclosed her identity in connection with her discriminatory harassment allegations, she lost the right to invoke anonymity protection for those same allegations. On April 25, 2018, when Ms. Wertheimer notified the Director that the Employee ought to pursue allegations of discriminatory harassment, the Employee’s identity *was not a secret because she had unlocked her identity* as a result of her late March/early April attempt to submit these allegations to the EEO Office and in her subsequent communications with FHFA

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management concerning those allegations. Had Ms. Wertheimer declined to notify the Director, the refusal by FHFA's EEO Office to file the Employee's EEO Complaint would have deprived her of her right to bring the Complaint within the allowed 45-day period.⁵

[B] HHS-OIG found that Ms. Wertheimer ran afoul of the IG Act when she disclosed the Employee's name as a whistleblower to the Director because OIG was not conducting its own investigation and disclosure of the Employee's identity was avoidable.

Response: The DROI misreads the plain language of the IG Act, in two critical respects.

First, the Employee's substantive allegation of discriminatory harassment was filed in two places. She first filed it as an OIG Hotline Complaint. FHFA-OIG's Office of Investigations determined that FHFA-OIG lacked subject matter expertise to review the substantive merits of Employee's allegations and sent the Employee to FHFA EEO. As a matter of law, EEO allegations cannot be made anonymously. FHFA EEO (erroneously) refused to allow the Employee to file her allegations of discriminatory harassment as an EEO claim. The FHFA Director had ultimate authority over the FHFA's EEO office and was the one person who could assure that the Employee's discriminatory harassment concerns were investigated. It was for precisely this reason—the need for an investigation—that Ms. Wertheimer notified the FHFA Director. She was aware that any EEO investigation into Employee's allegations, which the Employee had sought to pursue, necessarily would have required disclosure of her identity.

Second, the IG Act vests each IG with discretion to determine whether disclosure of an anonymous whistleblower was "unavoidable" during an investigation, a determination which Ms. Wertheimer, as the then-FHFA IG, made. The record here shows that the Employee raised serious claims of discriminatory harassment but, through no fault of her own, found no forum willing to investigate those claims and her 45-day EEO limitation period to file was running out. In order to assure the Employee's right to have a forum in which her claim would be investigated, it was imperative that Ms. Wertheimer alert the Director that the Employee had filed the same allegations with the OIG; that the OIG determined that it lacked expertise to investigate them and directed the Employee to FHFA EEO as the proper forum; and that FHFA EEO had already declined to file her claim. Had the Director *not* been so informed, the likely result would have been a complete loss of the Employee's right to be heard on her discriminatory harassment claim: OIG would not have investigated it and as an EEO claim her allegations may

⁵ The Executive Summary states that Ms. Wertheimer "violated the IG Act when, on April 25, 2018, she disclosed [the Employee's] identity *and details* . . . to senior agency officials." Exec. Sum. at 3 (emphasis added). That statement is yet another error because it misstates the DROI's own Investigative Findings. The DROI actually found only that the Employee's *identity* was improperly disclosed. See DROI at 20. As we show in this submission, that identity-disclosure finding is itself erroneous. But there is absolutely no basis for the summary accusation that *details* of any complaint were disclosed to anyone. The Executive Summary's reference to "disclosed . . . details" is completely without support.

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have been time-barred. On these facts, disclosure was simply unavoidable and it was reasonable for Ms. Wertheimer to make exactly that determination.

Congress, in adopting Section 7 of the IG Act, vested each IG with discretion to determine whether such a disclosure is “unavoidable.” *See* 5 U.S.C. App. §7((b) (“The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, *unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.*”) (emphasis added). The U.S. District Court put the matter plainly in *Iglesias v. USAID*: “[Section] 7(b) grants the Inspector General discretion to determine whether such disclosure is ‘unavoidable’ during [an] Inspector General’s investigation.” 2018 WL 4954148 at *11, n.12 (D.D.C. 2018). Precisely because the statute uses the word “determines” (“Inspector General *determines* . . . unavoidable[ility]”), Ms. Wertheimer’s had total discretion to decide that disclosure was “unavoidable.” Indeed, her discretion was so complete that it could not be reviewed even by a court because there is no law for a court to apply in such a case. Not only were there no *judicial* precedents to guide such a review (no court has ever overturned an inspector general’s exercise of discretion to make unavoidable disclosure pursuant to section 7(b)), there is no *statutory* guidance either: the IG Act identifies no factors to shape, and places no limits upon, the discretion exercised in making an IG’s unavoidability “determin[ation].” *See Drake v. FAA*, 291 F.3d 59, 72 (D.C. Cir. 2002) (decision of agency representative to adjourn meeting whenever “he *determines* it to be in the public interest” was committed to agency discretion by law) (emphasis added); *Claybrook v. Slater*, 111 F.3d 904, 908-09 (D.C. Cir.1997) (same); *Sierra Club v. U.S. Fish and Wildlife Serv.*, 930 F.Supp.2d 198, 204-07 (D.D.C. 2013) (court lacked any manageable standard to evaluate the agency’s “determin[ation]” in the exercise of its statutory discretion).

Where, as here, there is no judicial authority to second-guess Ms. Wertheimer’s “determin[ation],” the IC investigators (and the IC itself) have no power to do so. And even if, contrary to fact, the IC had such a power, it would be obligated to exercise it in a lawful way, pursuant to an abuse of discretion standard. The DROI not only failed to do this it also failed to provide the IC with the record necessary to evaluate the issue. The DROI simply *assumes* what it purports to establish—that disclosure was *not* “unavoidable”—and it reaches its conclusion without any analysis or so much as a single word of factual support. It contains nothing at all that would qualify as an explanation undergirding the conclusion that “disclosure” was not unavoidable.

The process by which the DROI reached that conclusion was not a lawful one: no precedent, no reasoning and no factual analysis supports it. Nor does the DROI reflect any awareness that the unavoidability judgment was committed by Congress to the inspector general’s discretion. In the end, the DROI’s conclusion is no more and no less than an arbitrary pronouncement. It cannot stand.

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These Investigative Findings are defective not only for the foregoing reasons, but also because they altogether fail to assess Ms. Wertheimer's reliance on the advice of Agency counsel.

III. Ms. Wertheimer Did Not Violate the IG Act Because She Notified the FHFA Director Upon the Advice and Direction of Agency Counsel.

Even assuming the Employee retained anonymity, *and* that disclosure had not in fact been unavoidable, *and* that Ms. Wertheimer lacked discretion to make that judgment (all of which are incorrect), Ms. Wertheimer *still* did not violate the IG Act. The FHFA-OIG Chief Counsel, who occupied a position established by the IG Act, 5 U.S.C. App. §3(g), advised her (i) that the Employee was no longer anonymous; (ii) that disclosure of her identity was, in any event, unavoidable; and (iii) that she had a legal duty to notify the Director. Ms. Wertheimer then notified the Director on the advice of FHFA-OIG counsel.⁶

In her April 29, 2021 interview, Ms. Wertheimer explained her basis for notifying the Director that the Employee had made an EEO Complaint:

there was a meeting [with the Director] that that was scheduled on [Wednesday] April 25, 2018, and earlier in that week, and I don't remember if it was Monday or Tuesday . . . the chief counsel of FHFA OIG came to my office and said, you have, we have tried at FHFA to process complaint, the EEO function. Uh, they had no reason to think they have. She has 45 days to, to file an EEO complaint. Her time is running out.

LW Ex. 1, LW Tr. at 10. She testified that FHFA-OIG's Chief Counsel went on to explain that the Employee's discrimination complaints needed to be considered by FHFA's EEO office.

We, we are not going to deal with her complaint. Uh, the investigators have determined it's not cognizable by us. We don't have the expertise. It is not

⁶ Ms. Wertheimer did not discuss the advice-of-counsel defense in her December 3, 2018 submission to CIGIE, DROI Ex. 15, precisely because she had received the advice through what she understood to be a privileged communication from Agency counsel. At that time, she did not believe that she could unilaterally waive the attorney-client privilege to defend herself against a *personal* accusation when the privilege belonged to her as the Inspector General in her *official* capacity. In April 2021, CIGIE adopted a change to its IC Policies and Procedures eliminating the attorney-client privilege against inquiries by the Integrity Committee (or, at least, clarifying its view that there had never been such a privilege). At that point, Ms. Wertheimer no longer had cause for concern that discussing the Chief Counsel's advice with the investigators might constitute a waiver of the FHFA-OIG's attorney-client privilege, and she therefore testified about that advice at her April 29, 2021 interview. *See* LW Ex. 1, LW Tr. at 10-11.

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something, it's not in our lane what is typically said in our office. It's got to be done in the EEO of FHFA. We tried, and she's tried. She went and filed this, or tried to file it. She didn't file it. They wouldn't allow her to file it.

Id. He then advised in no uncertain terms that Ms. Wertheimer was obligated as head of the FHFA-OIG to notify the Director of his duty to remove the obstacles encountered by the Employee in attempting to file her EEO Complaint.

You have a duty under the law to tell Director Watt the problems, uh, with, with his programs and offices. This is a big problem for the woman who has raised what it appears, the face of a complaint or E – we hadn't seen her EEO complaint, but we understood it was, it, it mirrored what she had given to us on March 19th about discriminatory promotion practices. That's what her lawyer told us. So, if you take that, the allegations, read them, they're troubling. She needs her day, and she needs those, those allegations to be heard and investigated, and she's gonna be out of time, and you have a duty and a responsibility to bring those to Director Watt.

Id. (emphasis added). Ms. Wertheimer did not accept this advice unquestioningly. She raised with her Chief Counsel the very concern she is now accused of ignoring.

Now . . . I [Ms. Wertheimer] did say to [the Chief Counsel] . . . I understand she's asked to be anonymous. What about that? And his answer to me was, it's unavoidable. You cannot have, you can't say to Director Watt, oh, somebody has an EEO complaint. I can't tell you who. It's serious. So, you have 700 employees. Find the one. And [the Chief Counsel] said to me, her identity is already known at FHFA, because she filed a complaint with EEO. She tried, and they wouldn't allow it, and we know she's talking to people in leadership at FHFA. So, she's not anonymous anymore about this EEO. You have to tell it. Otherwise, we'll be harming this individual, who has, appears to have a valid complaint.

Id. at 10-11. All of this testimony is uncontested. It exculpates Ms. Wertheimer in full. *And yet the DROI never addresses it.*

The DROI accuses Ms. Wertheimer of violating the IG Act notwithstanding that the notice she provided to the FHFA Director was given on the advice of FHFA-OIG counsel. That reliance on counsel is a complete defense to this accusation. “The advice-of-counsel defense requires the defendant to establish four elements: he must have ‘(1) made complete disclosure to counsel; (2) requested counsel’s advice as to the legality of the contemplated action; (3) received advice that it was legal; and (4) relied in good faith on that advice.’” *SEC v. Prince*, 942 F.Supp.2d 108, 138 (D.C.D.C. 2013) (quoting *SEC v. Zacharias*, 569 F.3d 458, 467 (D.C. Cir. 2009)); *see also United States v. Gray-Burriss*, 920 F.3d 61, 66 (D.C. Cir. 2019) (defendant is entitled to a jury instruction on the advice-of-counsel defense when he introduces evidence that

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(1) “he relied in good faith on the counsel’s advice that his course of conduct was legal,” and (2) “he made full disclosure of all material facts to his attorney before receiving the advice at issue.”) (quoting *United States v. DeFries*, 129 F.3d 1293, 1308 (D.C. Cir. 1997)).

All four elements are satisfied here. First, “complete disclosure” had been made to FHFA-OIG’s Chief Counsel. In fact, he had gathered the relevant information himself and on his own initiative.⁷ There is no suggestion in the record (or elsewhere) that Ms. Wertheimer knew anything FHFA-OIG’s Chief Counsel did not know, let alone that she concealed something from him. All the necessary information originated with the Chief Counsel. Second, Ms. Wertheimer “requested counsel’s advice” when he “came to [her] office” for the purpose of explaining the problem. LW Tr. at 10. And she quite pointedly “requested counsel’s advice” when she raised with counsel the central question presented by the accusation against her, namely, the question of the Employee’s anonymity. *Id.* Third, she not only received advice that informing the Director “was legal,” she was also advised that it was *legally obligatory*. FHFA-OIG’s Chief Counsel said, “you have to tell it.” Fourth, Ms. Wertheimer relied in good faith on that advice. That good faith is evidenced not only by her having expressly inquired about the anonymity issue, it is also supported by her undisputed, benevolent purpose in notifying the Director: the Employee’s EEO Complaint had made very serious accusations of discriminatory harassment and, with the 45-day time period running short, the Employee was in serious danger of losing her EEO rights altogether.

The DROI contains no analysis and gives no consideration at all to Ms. Wertheimer’s advice-of-counsel defense to the accusation that she violated the statute. This omission is inexplicable. The record is clear and there is no evidence disputing (let alone contradicting) the facts supporting the advice-of-counsel defense. This defense, by itself, vitiates the conclusion drawn in the DROI.

IV. The Investigation Itself Has Been Performed in Violation of the IG Act, the CIGIE Quality Standards for Investigation and the CIGIE Integrity Committee Policies and Procedures.

A. The Investigators Were Unfamiliar with Key Evidentiary Material and Consequently Failed to Make the Necessary Record or Justify the Determination of Wrongdoing.

The IC’s Policies and Procedures (“ICP&P”), in addition to mandating the use of the CIGIE Quality Standards of Investigation (“QSI”), require the IC to “determine whether . . . facts within the report of investigation are proven by a preponderance of the evidence . . .”

⁷ See *DeFries*, 129 F.3d at 1309 (“So long as the primary facts which a lawyer would think pertinent are disclosed, or the client knows the lawyer is aware of them, the predicate for an advice-of-counsel defense is laid.”) (emphasis added).

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ICP&P at 11. In building that evidentiary record, the QSI contains a requirement of thoroughness: “All investigations must be conducted in a diligent and complete manner.” QSI at 8 (General Standards-Due Professional Care - Thoroughness). The QSI also contains a requirement of Objectivity; it requires that “[e]vidence must be gathered and reported in . . . a manner [that] includes . . . exculpatory information.” *Id.* (General Standards – Due Professional Care – Objectivity) The QSI’s Qualitative Standards also include the following reporting requirement: “Reports (oral and written) must thoroughly address all relevant aspects of the investigation and be accurate, clear [and] complete . . .” QSI at 13 (Qualitative Standards-Reporting). The Reporting Standard also says that “[r]eports should contain exculpatory evidence and relevant mitigating information when discovered during any administrative investigation.” *Id.* at 14; *see also* QSI at 11 (“The investigator . . . also has a duty to be receptive to evidence that is exculpatory”)

The DROI is critically defective by every one of these measures. Nowhere in the DROI can there be found an assessment of the evidence determining that a violation has been found by a preponderance of the evidence. The Investigative Findings contain no weighing of the evidence and no analysis or assessment of any kind. The determination of wrongdoing is therefore standardless—pure *ipse dixit*. In particular, there is no consideration of mitigating and exculpatory evidence. These defects were an inevitable result of the IC investigators’ failure to follow CIGIE’s own standards of thoroughness, objectivity and reporting completeness. The IC’s investigators failed to present a complete account because they either were not provided the necessary materials by the IC itself or because, although possessing them, they were not acquainted with them during Ms. Wertheimer’s interview, a key juncture in the investigation. And, in failing to abide by the requirements of the QSI, the HHS-OIG investigators also violated the IG Act itself, which says, in mandatory language, that “[i]nvestigations . . . shall be conducted in accordance with the most current *Quality Standards for Investigations*.” 5 U.S.C. App. § 11(d)(7)(A) (emphasis added).

To illustrate: when Ms. Wertheimer was interviewed by the IC investigator, that investigator appeared to be completely unfamiliar with two documents at the center of the investigation. The first is Ms. Wertheimer’s December 3, 2018 response to the original allegations. That document was an 18-page letter from Ms. Wertheimer’s counsel to the IC, answering the allegations point-by-point, and setting forth her defense to the accusation that she had not breached the complaining Employee’s anonymity. DROI Ex. 15. The letter also contained 28 exhibits with supporting factual material. When Ms. Wertheimer was interviewed by the IC’s investigator on April 29, 2021, *none of the questions posed to her reflected any familiarity with the response and supporting materials*. During the course of the interview, Ms. Wertheimer herself made references to her counsel’s submission to the IC. Responding to those references, the IC investigator said this: “*I don’t have that document*—so that’s why I’m asking you—to explain what it is that referring to.” The investigator then told Ms. Wertheimer that, if she liked “[she] could read it into the record . . . but, like I [the investigator] said . . . I don’t have

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that, so *I don't know what you're referring to . . .*” LW Ex. 1, LW Tr. at 9-10 (emphasis added).

In that same interview, Ms. Wertheimer was also questioned about a second, specific formal accusation made against her (now resolved in her favor) that she had wrongfully omitted information in her (b) (6), (b) (7)(C) testimony before the House (b) (6), (b) (7)(C) .⁸ When Ms. Wertheimer was asked whether she recalled testifying during her Congressional appearance about discussions with FHFA officials, she answered by referring to certain places in the transcript of that Congressional testimony. In response to Ms. Wertheimer's references, the IC investigator said, “*I don't have a transcript in front of me to refer to.*” LW Ex. 1, LW Tr. at 17 (emphasis added).

To state the issue succinctly: Ms. Wertheimer had been accused of disclosing information in violation of the IG Act and of giving misleading testimony to Congress. Yet, in the investigative interview, the IC investigator herself, acting for the IC, said, on the record, that she was unfamiliar with the document setting forth Ms. Wertheimer's factual defenses and that she had no copy either of the letter containing them or of the transcript containing the purportedly misleading testimony.

It must be said that the IC investigator conducted the questioning in a courteous manner. But the IC investigator's admitted lack of familiarity with two of the case's most important documents (“I don't know what you're referring to.”) is astounding. And the investigator's failure to ask any questions based on these documents, indeed the failure even to have them available during the interview (“I don't have a transcript in front of me”), is a staggering display of professional incompetence. It was not *Ms. Wertheimer's* obligation “to read [anything] into the record.” LW Tr. at 10. It was the job of the IC investigator to develop a complete investigative record, including all exculpatory evidence, so as to enable the IC to “assess the report,” 5 U.S.C. App. §11(d)(8), and determine all “ultimate issues,” ICP&P 10-C. The IC investigator did not do that. The result is a legally and factual deficient DROI. Its defects represent a gross failure by the IC to fulfill the QSI requirements of thoroughness and objectivity, as well as the duty to consider exculpatory and mitigating information.

B. The Report Flouts the Requirements of Timeliness Established by Congress and by CIGIE's Own Policies, Procedures and Standards.

Congress has legislated a series of deadlines for conducting CIGIE IC investigations. 5 U.S.C. App. §11(d)(5)-(8). These deadlines were specifically enacted in 2016 to require that

⁸ Ms. Wertheimer was notified of this accusation in an October 18, 2019 letter from CIGIE IC Chair Scott Dahl to (b) (6), (b) (7)(C). LW Ex. 2. The February 17, 2022 Cover Letter concluded that the IC investigator “did not find evidence to support the allegation” that Ms. Wertheimer “omit[ed] from her testimony to Congress [a] material fact.” Cover Letter at 2.

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CIGIE IC investigations be completed in a timely manner. In this case, the CIGIE IC has ignored these Congressional mandates and flouted the mandatory deadlines at every turn.

The IC is a creature of statute. It was created by the Inspector General Reform Act of 2008 (IG Reform Act) and provided by Congress with limited investigatory authority. For example, the IC may investigate allegations against Inspectors General and designated members of their staffs, but cannot investigate every member of a particular OIG. When the original IG Act became law in 1978, Congress specified the steps the IC must take when reviewing and investigating such allegations but set no timeframes within which the IC would be required to complete those steps. The legislative history of the IG Act reflects that, within ten years, Congress had grown very concerned with the time taken by the IC to conduct and complete its investigations.⁹ With the passage of the Inspector General Empowerment Act of 2016 (IG Empowerment Act), Congress imposed specific deadlines on the IC.¹⁰ Specifically, it directed that the IC “shall” complete each of the steps in its investigative process – review, referral and investigation -- “not later than” a specified period of time. 5 U.S.C. App. § 11(d)(4)-(8).

Congress used the word “shall” throughout the IG Act, as amended, to direct certain actions to be taken within fixed periods of time. As the Supreme Court has counseled, one “must presume that a legislature says in a statute what it means and means in a statute what it says there.”¹¹ Congress’ use of “shall” concerning the timeframes within which the IC must complete the three steps in its investigative process¹² establishes that the IC is authorized to act only within these statutory deadlines, and not beyond. As the following chronology establishes, the IC has failed utterly to meet these statutory deadlines.

⁹ See, e.g., S. Rep. 114-36 (May 5, 2015) at 11 (“Where the IC does conduct its own, full investigation, it does so without any specific deadlines. Committee Members and others have expressed concern about the length of some IC investigations.”). The then-CIGIE Executive Chairman, Department of Justice IG Michael Horowitz, conceded in written testimony related to the IG Empowerment Act that he was aware of “recent questions that have been raised relating to the work of [the IC], including with respect to the timeliness of its work and the transparency of its efforts.” Statement of Michael E. Horowitz to the U.S. House of Representatives Committee on Oversight and Government Reform, “Inspectors General: Independence, Access and Authority” (February 3, 2015) at 6, ¶ 2.

¹⁰ Pub. L. 114-317, § 3.

¹¹ *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“[I]n interpreting a statute a court should always turn first to one cardinal canon before all others. . . . [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.”) See also *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102, 109 (1980).

¹² Congress’ incorporation of extension provisions into section 11(d) proves that it intended its timeframes to be fixed. Had Congress intended the timeframes to be flexible, then there would have been no reason to provide the IC with opportunities to seek extensions—the IC would be able to simply blow past the deadlines without fear of losing its investigative authority.

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- The IC received a complaint alleging a violation by Ms. Wertheimer of IG Act, section 7(b), on September 4, 2018.
- The IC notified Ms. Wertheimer that it was initiating an investigation on October 19, 2018. Letter from Scott Dahl, Chairperson, CIGIE Integrity Committee to Laura Wertheimer, LW Ex. 3. Pursuant to the IG Act, as amended, the IC had a statutory obligation to *conclude* the investigation against Ms. Wertheimer *within 150 days* of October 25, 2018, when it notified Ms. Wertheimer that it was investigating allegations against her. Ms. Wertheimer, through counsel, responded to the allegations in writing on December 3, 2018 and provided factual materials in support of her response. DROI Ex. 15.
- The IC made its request for detailee-investigators to the HHS-OIG, pursuant to Section 11(d)(6) of the IG Act and ICP&P 8-B, on May 22, 2019 to investigate allegations against FHFA-OIG's Chief Counsel, not Ms. Wertheimer, and that investigation was opened on August 28, 2019. Exec. Sum. at 1.
- The IC later amended the scope of its investigation to include the allegation of wrongdoing against Ms. Wertheimer at issue here *on October 18, 2019*. *Id.* This action was taken *358 days after* it notified Ms. Wertheimer, on October 25, 2018, that it was investigating allegations against her, a date far beyond the statutory obligation to conclude the investigation against Ms. Wertheimer *within 150 days* of October 25, 2018.
- The IC's investigators first contacted Ms. Wertheimer about obtaining her testimony on February 22, 2021. That date was *916 days after the IC initiated this investigation* and *558 days after HHS-OIG began working on it*. On that date, counsel for Ms. Wertheimer received the following email from the IC investigator handling this matter:

I am conducting an investigation on behalf of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I would like to speak with your client, Federal Housing Finance Agency Inspector General Laura Wertheimer (IG Wertheimer), in relation to the responses IG Wertheimer provided to the IC on December 3, 2018 via Williams & Connolly LLP. *Please advise of IG Wertheimer's availability to meet by close of business this Wednesday, February 24, 2021.* I am available to speak with IG Wertheimer anytime on Thursday or Friday of this week. *I would like to meet with IG Wertheimer on or before Friday, February 26, 2021. If we receive no response by you or IG Wertheimer by February 24, 2021, we will consider the lack of response to be a denial of our request for assistance.*

Email from IC Investigator (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C), counsel to Ms. Wertheimer, dated February 22, 2021 (emphasis added). LW Ex. 4. And so: after sitting

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on this matter for two and a half years, the IC—with no prior notice—informed Ms. Wertheimer that she had *four days* to appear for an interview and threatened to make an adverse finding against her if she did not comply.

- Ms. Wertheimer was interviewed by the IC’s investigators in April 2021. She cooperated completely and unreservedly, withholding no documents, asserting no privileges and answering every question. *See* LW Ex. 1.
- Unbeknownst to Ms. Wertheimer, the IC investigator at HHS OIG completed its report and delivered it to the IC on August 24, 2021. Exec. Sum. at 1. The IC received it *676 days* after its investigators had commenced work on the investigation.
- After 177 more days passed, the IC forwarded the DROI to Ms. Wertheimer on February 17, 2022. The delivery date was nearly *three and one-half years after the IC received the original complaint in this matter*; 853 days after the IC’s investigators at HHS OIG began their work; and 202 days after Ms. Wertheimer’s retirement (after almost seven years) from public service. Between October 25, 2018 and the February 17, 2022 date on which Ms. Wertheimer received the DROI, *1212 days passed*.

These abuses—not least the IC’s imperious demand that Ms. Wertheimer be interviewed on four days’ notice after years of IC inaction—speak for themselves. The IC has displayed callous indifference to its statutory obligation to adhere to Congressionally imposed time limits. It has also ignored its own (self-imposed) QSI requirement, which says that “investigations should be conducted and reported in a timely manner.” QSI at 8. And it has made a mockery of its stated rationale for imposing a timeliness requirement: “[I]t is especially critical given the impact investigations have on the lives of individuals.” *Id.*

The IC has never shown the least regard for the impact of this investigation on Ms. Wertheimer.

There is one final point to be made. This letter has been written with an eye on its public release and it will be publicly released in the event the IC makes a final determination that Ms. Wertheimer has violated the IG Act. Such a conclusion is completely unsupportable as a matter of fact and law, and any competent legal authority, trial or appellate, would draw exactly that conclusion. But the CIGIE IC functions as its own legislator, applying policies and standards of its own devising, both prospectively and retroactively; as its own investigator/prosecutor, 5 U.S.C. App. §11(d)(5)-(7); and as its own final judge, 5 U.S.C. App. §11(d)(8). The result is that CIGIE IC determinations involving presidentially appointed inspectors general are essentially

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lawless. Adding injury to injury, CIGIE releases its determinations in reports to the public (via the relevant Congressional committees) pursuant to Section 11(d)(8) of the IG Act. The consequence is this: when the IC errs, and it is on the verge of erring gravely here, the accused has no means of defense, and no opportunity to supplement or correct shoddy investigative work of the sort presented by this case.

In more than 25 years of working as a lawyer in Washington DC, I have never encountered practices as incompetent, unprofessional, and unanswerable to law as the practices of the CIGIE IC. Under our Constitution, no agency should have the unreviewable power to publicly declare, without anything approximating due process, that a U.S. citizen, whether or not a public servant, has violated the law.

If the CIGIE IC—against the weight of all the law and evidence laid out above—makes such a final determination here, we will have been left with no choice but to respond publicly.

Sincerely,

(b) (6)

Emmet T. Flood

LW EX. 1

CIGIE IC CASE # 971

(b) (6), (b) (7)(C) : Okay. Um, good afternoon everyone. Uh, my name is (b) (6), (b) (7)(C) . I am one of the assistant special agents in charge with the Special Investigations Branch within the Office of Inspector General, Office of Investigations, and we are here today on Case No. (b) (6), (b) (7)(C) , uh, which is also Integrity Committee Complaint Referral 971. Uh, if everyone will, introduce themselves, please.

IG Wertheimer: I'm Laura Wertheimer, the Inspector General to Federal Housing Finance Agency.

Other Speaker: Emmet Flood, Counsel for Ms. Wertheimer.

Other Speaker: (b) (6), (b) (7)(C) , Office of Counsel to the Inspector General of HHS.

Other Speaker: (b) (6), (b) (7)(C) , Office of Counsel to the Inspector General, HHS.

(b) (6), (b) (7)(C) : Thank you, and, um, just for the record, this interview is being recorded with the consent of all parties. Uh, so, we just have a few questions to, um, go over, again. As we discussed previously, um, we don't foresee going over 2 hours, but we'll address it at that time, um, because I know that there are other, um, engagements, Mr. Flood must have. Um, so, I'm just gonna go straight into the questions. Um, so, the first question is, uh, for Ms. Wertheimer, or Inspector General Wertheimer, um, is there a formal policy or practice at FHFA OIG with regards to keeping complainant identities a secret?

IG Wertheimer: I am not aware whether there is or there is not. I don't know.

(b) (6), (b) (7)(C) : Okay. Uh, as far as complainants' consent to disclose, how is that, um, communicated?

IG Wertheimer: Generally? I, I don't, I can't answer that questions, generally. I don't know. I know what's happened here, but I can't s, I don't know.

(b) (6), (b) (7)(C) : Okay. Um, so, what occurred in this instance, then?

IG Wertheimer: Uh, uh, as I believe the record shows, and, uh, the events occurred 3 years ago, but we have both the testimony I have provided and a lengthy letter from my counsel that

(b) (6), (b) (7)(C) filed a complaint with us on or about the 19th of March. (b) (6), (b) (7)(C) wrote her back, or wrote her and her counsel, I don't remember, on or about the 27th or 28th of March, the 28th, uh, recommending that she file a complaint to the office of FHFA. Um, the lawyer wrote us back on or about April 4th, asking us to pursue her EEO complaint; that, that she'd been turned away by the ****. Um, there came a time in late April when we were aware that she had disclosed her complaint to FHFA, and we were aware that time was running out on her claim, her EEO claim. She had a 45-day window, and we were aware her complaint was known to FHFA, and it didn't appear they were doing anything, and, so, a decision was made, uh, well, advice was given to me by the, uh, chief counsel at FHFA, that I should send the director **** to do your job and make sure the EEO office processed the **** (b) (6), (b) (7)(C) ****.

(b) (6), (b) (7)(C) : Okay. And did that have, um, did, in that complaint, were there, was there any, um, consent given to disclose her identity?

IG Wertheimer: The March complaint that she filed with us?

(b) (6), (b) (7)(C) : Right? The, the initial complaint that she filed.

IG Wertheimer: Not consent. She did not consent to disclose her identity.

(b) (6), (b) (7)(C) : Yep. And, um, in cases where the, um, complainant refuses to give consent to disclose her identity, what is the course of action that FH, FHFA typically takes?

IG Wertheimer: I can't speak to that.

(b) (6), (b) (7)(C) : Uh, and then, in regard to complaints, how, um, how would you be made aware, aware of complaints, um, that come through the hotline? Are you, are you informed of them by the, I, I'm sure you, yourself don't review them, um, but have you come, become aware of complaints that are made through the hotline?

IG Wertheimer: It depends on the complaint. Uh, there are many complaints I'm not aware of.

(b) (6), (b) (7)(C) : And what -

IG Wertheimer: There -

(b) (6), (b) (7)(C) : - I'm sorry.

IG Wertheimer: ****.

(b) (6), (b) (7)(C) : ****. Mm hmm.

IG Wertheimer: Mm hmm. Um, so, uh, uh, let me give you an example.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: There is an allegation that - well, let me back up. Let's talk about this complaint, and not general complaints, but we've had hundreds of complaints.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: I, I don't read every complaint that comes in. I don't read a summary of every complaint that comes in, but I am told about a complaint when it gets escalated to me by (b) (6), (b) (7)(C), or, **** or, chief counsel's office, or (b) (6), (b) (7)(C). Here, (b) (6), (b) (7)(C), brought it to my attention in early April 2019 as I explained **** witness **** to the ****.

(b) (6), (b) (7)(C) : Okay. So, you were, uh, made aware of this specific complaint, um, by (b) (6), (b) (7)(C)?

IG Wertheimer: Yes. I believe, uh, my, uh, submission to the IC, uh, uh, walks through, uh, what he, that (b) (6), (b) (7)(C) **** on Page 13, um, brought it to this, brought to my attention both that she filed a complaint, and her lawyer, that he had written her a letter saying you need t file with EEO, and her lawyer had written saying that she tried to file, and she was not allowed to file ****.

(b) (6), (b) (7)(C) : So, uh, is this typically how you would be made aware of hotlines that come, um, hotlines that come to the inspector general, of complaints?

IG Wertheimer: There's no one way I would be made aware. Uh, um, I may not be aware of a complaint for months, if it's being handled by a division, and then there's a hiccup, and it's brought to my attention. I may never be aware, or I may be

aware at the very beginning. It depends on the nature of the complaint, the specificity of the complaint, and whether the, my deputies feel I should get involved with it.

(b) (6), (b) (7)(C) : And, um, so, in regard to, um, FHFA employee, (b) (6), (b) (7)(C), do you recall (b) (6), (b) (7)(C)?

IG Wertheimer: She helped me out there. I, what do you mean do I recall her?

(b) (6), (b) (7)(C) : Um, you, you do know, uh, (b) (6), (b) (7)(C), is, correct?

IG Wertheimer: I, I, I don't think she works there anymore, but, I, I had not met her at the time I heard of her complaint.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: Before 2018.

(b) (6), (b) (7)(C) : Okay. But you are aware that she, um, was an FH, FHFA employee?

IG Wertheimer: Yes.

(b) (6), (b) (7)(C) : Okay. Um, and, do you recall or, or is there anything that you can tell me or that you're aware of regarding her complaint to the FHFA OIG hotline?

IG Wertheimer: Again, I, I believe in our, in my submission to the IC, I, I attached her hotline complaint. She had claimed as I recall, and I want to incorporate that response and referenced here, because it's been a while, and while I certainly refreshed my recollection by reading my response and my testimony, uh, it probably **** of what I knew contemporaneous to this. She had alleged discrima, racial discrimination to promotion is my, is my recollection. She had also had an allegation that peop, there had been a, a number of anonymous whistleblower complaints challenging the mission of the position, the executive position, challenging **** saying she, people shouldn't apply for this position, and she wanted us to investigation who was behind those anonymous whistleblower, the **** reports of her March 19th ****.

(b) (6), (b) (7)(C) : I'm sorry. You broke up a little bit on my end. Um, I apologize. Can you -

IG Wertheimer: Oh.

(b) (6), (b) (7)(C) : - go over the last part of what you said?

IG Wertheimer: Her complaint to us had two parts. One, so as to have us investigate the motivation behind anonymous whistleblowers challenge the creation of a ****, or some executive positions to which she had applied, and one alleged discriminatory treatment in promoting African-Americans.

(b) (6), (b) (7)(C) : Yep. And, how did you become aware of these complaints?

IG Wertheimer: I think I testified to that previously. I think I explained, by reference, my response that (b) (6), (b) (7)(C) brought to my attention in early April, and at the same time, he told me he recommended that they approach FHFA EEO, because he felt we didn't have the expertise to investigate that claim in-house at OIG, and that **** this properly in the EEO **** agency, and that, as my response reports, her lawyer wrote back saying we tried to file, where it's not ****.

(b) (6), (b) (7)(C) : Okay. Um, and, when did you first become aware of, uh, (b) (6), (b) (7)(C) complaint?

IG Wertheimer: Okay. Respectfully, when (b) (6), (b) (7)(C) brought it to my attention in early April.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: To the best of my recollection.

(b) (6), (b) (7)(C) : Okay. Um, and, were there any, um, briefings or discussions from other officials regarding her complaint once you were notified about it?

IG Wertheimer: Beyond (b) (6), (b) (7)(C) ?

(b) (6), (b) (7)(C) : Yes.

IG Wertheimer: I believe (b) (6), (b) (7)(C), was **** when he, (b) (6), (b) (7)(C) made his presentation. I think, but I, that's all I can recall.

(b) (6), (b) (7)(C) : Okay. Um, do you recall it, whether or not (b) (6), (b) (7)(C) ever communicated to you or any member of your

office, um, whether or not she, uh, wanted to remain anonymous or not?

IG Wertheimer: Well, she, I can tell you she never communicated it to me. I can't, uh, can't speak to what communications, if any, when she - I believe our people were dealing with her lawyer, so, I don't know that anyone communicated directly with (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) : Okay. So, you're not aware that she communicated that to anyone else, or that was communicated to anyone?

IG Wertheimer: I am - well, uh, uh, let me be clear. I, I do know her complaint that she asked for anonymity.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: So, I don't want to suggest I'm not aware of that.

(b) (6), (b) (7)(C) : Okay. But you're saying that she never directly communicated that to you?

IG Wertheimer: I don't believe I've ever spoken to (b) (6), (b) (7)(C), uh, in this period of time.

(b) (6), (b) (7)(C) : Okay. And you're unaware of any direct communication with other people in your office with respect to her anonymity?

IG Wertheimer: I became aware after April of 2018 that (b) (6), (b) (7)(C) had written her an email asking for permission to disclose her name, her identity. I don't believe I knew that at the time.

(b) (6), (b) (7)(C) : And the, are you aware of what the, uh, her response was?

IG Wertheimer: Uh, I -

(b) (6), (b) (7)(C) : ****?

IG Wertheimer: - I am not aware that there was a response.

(b) (6), (b) (7)(C) : Oh. Okay.

IG Wertheimer: But, you know, I, I, I, I, I don't, uh, want to, I want to answer your questions as thoroughly as I can.

(b) (6), (b) (7)(C) : Thank you.

IG Wertheimer: You have to also bear in mind that (b) (6), (b) (7)(C), on a parallel track, was talking about her complaint with FHFA. Um, so, you, you, you can only be anonymous if you keep yourself anonymous. Once you come out of the, um, anonymity cloak, you are known to people, and her complaint and her concerns were known to FHFA. So, there was nothing really to protect in the sense of she had made the same complaint to the EEO office, and then to (b) (6), (b) (7)(C), and then to (b) (6), (b) (7)(C) in April. Uh, so, it, it's not a **** record to suggest this anonymous whistleblower complaint was in a, a vacuum.

(b) (6), (b) (7)(C) : Mm hmm. Okay. Um, so, I guess along those lines, was it -

IG Wertheimer: ****, one second -

(b) (6), (b) (7)(C) : - ever, uh - are you ready? So, along those lines, was it ever directly communicated to anyone that she, or in your office, or anyone that you know of that she no longer wanted her, um, her complaint to be anonymous?

IG Wertheimer: I, I think I've answered your questions about anonymity. I -

(b) (6), (b) (7)(C) : Well, **** -

IG Wertheimer: I, you know, you're, uh - I don't know that she had any communication before ****. I know her lawyer wrote us. I know (b) (6), (b) (7)(C) wrote her. I don't know that she ever responded.

(b) (6), (b) (7)(C) : Mm hmm. So, are you also saying that you're unaware that her initial complaint, um, requested anonymity?

IG Wertheimer: I think I've already test - uh, I'm sorry. I think I've testified to, to that.

Other Speaker: ****.

IG Wertheimer: I am aware that she initially requested anonymity on March 19th.

(b) (6), (b) (7)(C) : Okay. And you're not aware that at any time she waived that right to anonymity?

IG Wertheimer: I think went to FHFA and disclosed her complaint and talked to people about it, it was no longer anonymous. Could you, could you just give me one second, on, one minute.

Other Speaker: Sorry.

IG Wertheimer: I'm sorry.

(b) (6), (b) (7)(C) : No worries.

IG Wertheimer: Please, proceed.

(b) (6), (b) (7)(C) : Um, hmm, let's see. Okay, um, so, just, and I'm, you know, that little break, just to be clear, so, although she never said that she no longer wanted her, um, wanted to be, uh, anonymous, um, there were other communications in which she, uh, discussed her complaint. Is that, that's accurate?

IG Wertheimer: I, um, I think I'll just say I've explained what I knew at the time to who she spoke to and what she spoke to them about, and that was my understanding.

(b) (6), (b) (7)(C) : Okay. But it's, it's, so, you're not aware that she ever explicitly gave up her right to be anonymous.

IG Wertheimer: I'm aware that she took information that she had given us and shared it with other people at FHFA.

(b) (6), (b) (7)(C) : Okay. Uh, did you, yourself, ever disclose her identity as it related to her hotline complaint to FHFA official?

IG Wertheimer: I believe have both testified to this and explained it in the response I've submitted, and **** submitted on my behalf. Uh, and I think, if you take a look at the testimony I provided, as well as, uh, it's at Pages 15 and 16, I explain the reasons, I, what I said to Director Watt and the reasons that I explained it to Director Watt, on April 25th. He was there with his, (b) (6), (b) (7)(C) , and I was there, with (b) (6), (b) (7)(C) .

(b) (6), (b) (7)(C) : Okay. And, um, during that -

IG Wertheimer: Meeting.

(b) (6), (b) (7)(C) : - conversation.

IG Wertheimer: It was a meeting. We were -

(b) (6), (b) (7)(C) : Meeting.

IG Wertheimer: - in the conference room, the director's conference room, in FHFA offices.

(b) (6), (b) (7)(C) : Okay. And, what, um, during that conversation, what, uh, what, if anything, did you all discuss about (b) (6), (b) (7)(C)?

IG Wertheimer: I, I really can't be more helpful to you than what I explained both in my testimony and in my response. Uh, so -

(b) (6), (b) (7)(C) : And are you referring to something? What are you referring to?

IG Wertheimer: Well, as I referred you to Pages 15 and 16 of my response to ****, and I quote testimony that I've provided. That, the, uh, I, and I don't -

(b) (6), (b) (7)(C) : ****, I don't have that document -

IG Wertheimer: - ****.

(b) (6), (b) (7)(C) : - so, that's why I'm asking you to -

IG Wertheimer: I am -

(b) (6), (b) (7)(C) : - explain, you know, what it is that you're referring to, so, if you know -

Other Speaker: I mean, yeah, let me give you a, kind of a lawyer to lawyer thing. Uh, what my client is, um, referring to is a December 3, 2018 letter to Scott Dahl, uh, at the, uh, Integrity Committee, uh, from, uh, my partner, (b) (6), (b) (7)(C), um, and that letter responds to a letter from the Integrity Committee dated October 25, 2018. That's the document being referred to.

IG Wertheimer: And this **** you're asking, not all of them, but any were asked by the Integrity Committee, and we gave this **** response to ****, uh, we've explained everything, uh, that we

knew then, and, uh, things haven't changed since then. So, I don't, I'm sorry you don't have it, but I don't know what to do about that. I could read it to you. Would that help?

(b) (6), (b) (7)(C) : Um, so, you could read it into the record, um, but, like I said, I don't, I don't have that, so, I don't know what you're referring to, and that's not -

IG Wertheimer: So **** -

(b) (6), (b) (7)(C) : - and it's separate and apart from our interview here today.

IG Wertheimer: Okay. Well, in the second half of April, April 2020, uh, let, let me just say, we, Director Watt and his team, met with me and **(b) (6), (b) (7)(C)**, every other Wednesday. We didn't communicate, I, I don't know what you do with, um, HHS OIG, but we did not have informal meetings with Director Watt. We didn't speak on the phone. I didn't catch him on the way to the lunchroom. This is how he had one, his relationship with my predecessor, told me the day after I arrived that this is how he was going to run his relationships, and that is what we did, and we met every other Wednesday, and, uh, um, there was a meeting that was scheduled on April 25, 2018, and earlier in that week, and I don't remember if it was Monday or Tuesday, but **** memory, uh, the chief counsel of FHFA OIG came to my office and said, you have, we have tried at FHFA to process **(b) (6), (b) (7)(C)** complaint, the EEO function. Uh, they had no reason to think they have. She has 45 days to, to file an EEO complaint. Her time is running out. We, we are not going to deal with her complaint. Uh, the investigators have determined it's not cognizable by us. We don't have the expertise. It is not something, it's not in our lane what is typically said in our office. It's got to be done in the EEO of FHFA. We tried, and she's tried. She went and filed this, or tried to file it. She didn't file it. They wouldn't allow her to file it. You have a duty under the law to tell Director Watt the problems, uh, with, with his programs and offices. This is a big problem for the woman who has raised what it appears, the face of a complaint or E - we hadn't seen her EEO complaint, but we understood it was, it, it mirrored what she had given to us on March 19th about discriminatory promotion practices. That's what her lawyer told us. So, if you take that, the allegations, read them, they're troubling. She needs her day, and she needs those, those allegations to be heard and investigated, and she's gonna be out of time, and you have a duty and a responsibility to bring those to Director Watt. Uh, now, uh, I did say to him, she, I

understand she's asked to be anonymous. What about that? And his answer to me was, it's unavoidable. You cannot have, you can't say to Director Watt, oh, somebody has an EEO complaint. I can't tell you who. It's serious. So, you have 700 employees. Find the one. And he said to me, her identity is already known at FHFA, because she filed a complaint with EEO. She tried, and they wouldn't allow it, and we know she's talking to people in leadership at FHFA. So, she's not anonymous anymore about this EEO. You have to tell it. Otherwise, we'll be harming this individual, who has, appears to have a valid complaint. So, what I did ****, and that is what I explained, a, a little more eloquently, but, uh, it is what Mr. Latkovich's letter explains.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: We wanted to protect (b) (6), (b) (7)(C). I'm sorry. I'm sorry.

(b) (6), (b) (7)(C) : Go ahead. You wanted to protect (b) (6), (b) (7)(C).

IG Wertheimer: Yes.

(b) (6), (b) (7)(C) : And, when you say protect her, you mean?

IG Wertheimer: Protect her E, her right to have an EEO claim ****.

(b) (6), (b) (7)(C) : So, um, just to be clear, so, you're saying that during the time that you, um, that you were speaking with Mr. Watt, that (b) (6), (b) (7)(C) identity was already known to him? Did I understand that correctly?

IG Wertheimer: I can't say it was known to him.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: I don't know what he knew. I knew it was known to the EEO officer.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: I knew it was known to (b) (6), (b) (7)(C). I knew, uh, but I can't tell you if Mr. Watt knew that she had been rebuffed from the EEO office.

(b) (6), (b) (7)(C) : Okay. So, during the time that you would've been dis, discussing, um, discussing (b) (6), (b) (7)(C) complaint, would, uh, and forgive me. Um -

IG Wertheimer: So, so, can I, I just want to take issue with the premise of your question a little bit.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: I, I, I never discussed (b) (6), (b) (7)(C) complaint with Director Watt.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: Uh, so, uh, just before you went too far, I, I **** -

(b) (6), (b) (7)(C) : Okay. Okay. But you never discussed her complaint with Mr. Watt, uh, are you saying that you knew, that he, that he knew about the complaint? He just wasn't aware of who the complainant was?

IG Wertheimer: I don't know what Director Watt knew. What I said to him was what I testified to, which was she had filed a complaint with us. The complaint had been made to the EEO office. The EEO office refused to process it, refused to file it.

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: Had shown her the door. And, I, I said to him, you need to do your job. The EEO function reports, make sure they file her complaint.

(b) (6), (b) (7)(C) : Mm hmm. But without ever disclosing who she was?

IG Wertheimer: No, I d, no, I want to be clear. I, I did say it was (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: Did.

Other Speaker: Okay. Inspector General Wertheimer, were you saying that, while her identity was a part of the conversation, you did not discuss the underlying facts of her complaint?

IG Wertheimer: That is correct.

Other Speaker: Okay. Thank you.

IG Wertheimer: I said - that's correct.

(b) (6), (b) (7)(C): Uh, and are you aware of, um, I mean, I, I know you've discussed, uh, you know, that she filed a complaint to the EEO office, um, but as far as her, uh, complaint with the OIG, are you aware that she ever gave consent to disclose her identity outside of the OIG?

IG Wertheimer: I think I've answered that question.

(b) (6), (b) (7)(C): Well, um, I know, uh, I know that, you know, we've just discussed that she made complaints outside of the OIG, but her complaints to the OIG, right, which was, um, which, under which she has the right to have her, um, identity, um, you know, kept private, did she ever give the OIG consent to, I, to, um, to disclose her identity to anyone, despite the fact that she may have spoken to other areas about, you know, her complaints, did she specifically give that, um, permission or consent to anyone within the OIG?

IG Wertheimer: So, I don't, I've got to take issue, I'm sorry, with the, with your, the premise of your question. I don't think it's an absolutely bar on an IG that if someone comes in, files a complaint, and says I want to be anonymous, that the IG can never disclose that absent consent from the complainant. I don't **** the statute.

(b) (6), (b) (7)(C): Mm hmm.

IG Wertheimer: Uh, so, if you want to direct me to the statute or the part of the statute where it says you may never disclose the identity absent the ****, express consent from the complainant, I would like to see that, but I don't think that's a ****, and there are other parts of the statute that impose duties and responsibilities on **** to **** the head of an agency of problems, ****, texts, programs and operations. Um, **** here we had a situation where her identity was no longer a secret. So, you can't, you can't put, the cloak of anonymity has been lifted. Um, you know, it's no longer the Harry Potter invisibility cloak.

(b) (6), (b) (7)(C) : Uh, I, I think I'll, I'll let, um, one of my *** attorneys, uh, g, um, you know, go a little further into that, but I do believe that, um, it's her right, you know, that, uh, anonymity is, is, is, within her discretion, right? So, if one of, um, if, (b) (6), (b) (7)(C) you could, um, I guess chime in regarding -

Other Speaker: Mm hmm.

(b) (6), (b) (7)(C) : - uh, this question.

Other Speaker: I'm sorry, Mr. Flood, were you about to say something?

Other Speaker: Yeah, what I'm about to say is, um, whether someone has a right or not, is a legal question, okay? And, um, I understood this to be a factual interview, and, of course, my client can give her understanding of things, um, and, and, but the law is the law, in, in all its clarity and ambiguity. Um, and, so, I just hope there aren't questions in which my client is asked to opine about legal matters or in which she's asked to accept a characterization of the law that may be, you know, true, false, or debatable. So, that's, that's what I was about to say.

Other Speaker: Okay. Well, with that in mind, (b) (6), (b) (7)(C) um, shall we carry on to the next section of our questions?

(b) (6), (b) (7)(C) : Okay. Um, let's see. Moving right along, um, uh, um, Inspector General Wertheimer, are you aware of anyone else, uh, within or on the FHFA OIG staff, uh, who disclosed (b) (6), (b) (7)(C) identity to other FHFA officials?

IG Wertheimer: Um, I am aware, and it's fair to say the response to which you, uh, do not have, have not been given access to, uh, on Pages 13 and 14, discusses a disclosure that was made by, um, uh, Mr. Depasquale, the chief counsel to (b) (6), (b) (7)(C), who is (b) (6), (b) (7)(C) at FHFA.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: Now, in that disclosure, well, why don't you ask a question and I'll -

(b) (6), (b) (7)(C) : Mm hmm. How did you become aware?

IG Wertheimer: He told me.

(b) (6), (b) (7)(C) : Okay. And what exac, uh, what did he explain to you about the disclosure?

IG Wertheimer: What he said to me was, look, we need to get FHFA to process this EEO complaint. And, **** (b) (6), (b) (7)(C) March 19th complaint doesn't mention the EEO. There is no mention about going to the EEO, filing an EEO complaint. It, it, there are allegations of discriminatory promotion practices. It's only her lawyer who writes back and says on April 4th, she's been to the EEO. They won't allow her to file a complaint. And, uh, so, Depasquale, uh, reviewed the law, having talked to (b) (6), (b) (7)(C), **** that he, it is permissible for him to speak with **** to say we have a problem. Your EEO function will not process a complaint that (b) (6), (b) (7)(C) tried to file. Please fix it. Make it right.

(b) (6), (b) (7)(C) : Okay. Um, and, when did that conversation that you just referred to, when did that happen? Do you recall?

IG Wertheimer: Huh, uh, the letter indicates that it happened on or about April 11th, 2018. Um, yeah.

(b) (6), (b) (7)(C) : All right. And, do, do you recall, um, testifying before Congress in (b) (6), (b) (7)(C) 2018?

IG Wertheimer: Yep.

(b) (6), (b) (7)(C) : And during that time, did you testify about (b) (6), (b) (7)(C) anonymous complaint before Congress?

IG Wertheimer: I responded to questions.

(b) (6), (b) (7)(C) : I'm sorry?

IG Wertheimer: I responded to questions I was asked.

(b) (6), (b) (7)(C) : Okay. And do you recall what, um, what some of your testimony was in response to questions asked by Congress?

IG Wertheimer: I've reviewed the transcript in preparing for this interview. So, if you want to direct my attention to a particular page and line, I would be happy to **** questions.

(b) (6), (b) (7)(C) : Um, let's see. Do, let's see. Do you recall being asked, um, about providing information to, um, Director Watt regarding (b) (6), (b) (7)(C) complaint.

IG Wertheimer: Can you give me a page and line, please? ****?

Other Speaker: Uh, ****, I think, uh, (b) (6), (b) (7)(C) is just asking generally if you recall testifying about that and responding to questions to questions from Congress about that.

IG Wertheimer: As I explained, I have reviewed my transcript response in preparation for this interview, and, yes, I was asked questions. Yes, I answered questions. Uh, there were a number of questions asked about my conversation with Director Watt.

Other Speaker: ****.

IG Wertheimer: By different representatives.

(b) (6), (b) (7)(C) : Okay. Do you remember that, um, discussing that specifically during your testimony at all?

IG Wertheimer: Well, short of, I, huh. I have refreshed my recollection. So, I know what's on the written page.

(b) (6), (b) (7)(C) : Mm hmm. Okay, so, regarding, um, regarding, um, uh, being asked about information, um, about leaked information about (b) (6), (b) (7)(C) com, complaint to Director Watt, do you recall testifying about that?

IG Wertheimer: Leaked information? I don't, I don't recall that any information was leaked, but, again, if they asked me, and I answered the question, direct me to a page and line. I will be happy to look at it.

(b) (6), (b) (7)(C) : Okay. I don't have that information. Um -

IG Wertheimer: Yes, but I'm not aware that any th, information was leaked.

(b) (6), (b) (7)(C) : Um, and do you recall during your testimony, um, questioning, um, regarding the information, uh, about (b) (6), (b) (7)(C) complaint being disclosed to Mr. Watt?

IG Wertheimer: I don't believe I disclosed information in the complaint to Director Watt. I disclosed she had filed a

complaint. I do not believe I went through what was in her complaint to Director Watt.

(b) (6), (b) (7)(C) : Okay. Uh, do you recall during your Congressional testimony whether or not you mentioned that you had any discussions with FHFA officials about **(b) (6), (b) (7)(C)** complaint to the OIG?

IG Wertheimer: I, I, I don't, uh, mean to be disrespectful, but if you want to give me a page and a line, I will be happy to talk about it, this is a lengthy transcript. Uh, I know, for example, that at the beginning, Page 76, Line 1773, I say, I me, I explain I meet with Director Watt on a scheduled basis with those in IG, and Director Watt attends those with two members of his senior staff. That is the only time I've met with Director Watt. Subsequently, when I am discussing what I said to Director Watt, I explain on Page 110, Lines 2618 forward, that I had a discussion with Director Watt at one of these meetings. Now, if you're asking me did I say at the time that other people were in the meeting, not at that page, but I have previously qualified I only met with, with people **** of his staff at **** IG.

(b) (6), (b) (7)(C) : Uh, just, uh, just to be clear, the, we're just que, I'm asking questions about your recollection about, um, what, what has occurred. I don't have a transcript in front of me to refer to. I don't have that information. Um, you know, this is me just asking questions, uh, about this investigation to, um, you know, try to, to get as much information as we can about what occurred during the, um, so, I just want to, you know, let, just let you know, know that. Um -

Other Speaker: Um, ****, um, we appreciate. Can we have 30 seconds off the record now?

(b) (6), (b) (7)(C) : Sure.

Other Speaker: Thank you, we're back.

(b) (6), (b) (7)(C) : Thank you. So, um, just going back to, I guess, uh, my last question. I know you were referring to information in, um, a transcript that you were reading. Um, um, so, again, during your Congressional testimony, did you mention whether you had any discussions with FHA officials about **(b) (6), (b) (7)(C)** complaint to the OIG?

IG Wertheimer: I don't recall.

(b) (6), (b) (7)(C) : I'm sorry?

IG Wertheimer: I don't, short of re, reviewing the transcript, if you like, I don't have an independent recollection.

(b) (6), (b) (7)(C) : Okay. Um, and, so, uh, you wouldn't be able to explain what exactly you, um, told Congress, uh, those discussions, if you had any?

IG Wertheimer: Well, I know I, I testified. I, I explained that I do remember testifying.

(b) (6), (b) (7)(C) : Okay.

IG Wertheimer: So -

(b) (6), (b) (7)(C) : And, so, can you, uh, tell us what you said to the Congressional members about those discussions?

IG Wertheimer: I, uh, I, I would think, it's best for us to ****.

(b) (6), (b) (7)(C) : Okay. Um, were there any discussions that you've had with FHA, FHFA officials that were omitted from the testimony you provided to Congress?

IG Wertheimer: That I personally had?

(b) (6), (b) (7)(C) : Yes. That you had with FHFA officials.

IG Wertheimer: In, in the April timeframe?

(b) (6), (b) (7)(C) : Uh, any discussions regarding, um, (b) (6), (b) (7)(C) complaint to the OIG?

IG Wertheimer: I'm not aware of any discussions that I had with anyone besides Director Watt and his ****.

(b) (6), (b) (7)(C) : Okay. Uh, did you mention to any Conres, Congressional members, um, any discussions your staff may have had with FHFA officials about (b) (6), (b) (7)(C) complaint?

IG Wertheimer: I don't know that there were any discussions about (b) (6), (b) (7)(C) complaint with FHFA officials.

(b) (6), (b) (7)(C) : Yep. Uh, did you mention to any congressional members discussions that Mr. Depasquale had with FHFA officials about (b) (6), (b) (7)(C) complaint?

IG Wertheimer: So, uh, the answer is, Mr. Depasquale, to the best of my knowledge, never discussed (b) (6), (b) (7)(C) whistleblower complaint with any FHFA officials. So, there, I had nothing to disclose at that point.

(b) (6), (b) (7)(C) : Okay.

Other Speaker: Inspector General Wertheimer, to be clear, when we use the phrase EEO complaint, are we collectively referring to her whistleblower complaint to the OIG hotline that OIG found was outside of its lane that was better directed to EEO?

IG Wertheimer: It was not framed as an EEO complaint. It was a complaint about discriminatory practices in promotions. I don't be, uh, I do not believe it referenced EEO. I did not know about her dealings with EEO from her ****. So, when you ask questions about her complaint, that's her whistleblower complaint. It doesn't mention the EEO.

Other Speaker: And when you say the EEO, is that a complaint that still came through the hotline?

IG Wertheimer: No. Not to my knowledge. That's an EEO complaint that (b) (6), (b) (7)(C) took to FHFA's EEO office. Now, if they look the same, I don't know, because I don't, didn't see her EEO complaint.

Other Speaker: And your office became aware that EEO was not investigating her EEO complaint how?

IG Wertheimer: Her law, her lawyer wrote us a letter on April 4th saying gone to the EEO office. Tried to file a complaint. They have discriminatory hiring practices, and they have refused to allow us to file a complaint.

Other Speaker: So, when Mr. Depasquale spoke to, uh, (b) (6), (b) (7)(C), he was discussing strictly the EEO complaint -

IG Wertheimer: Correct.

Other Speaker: - but did not mention any anonymous complaint that came through the OIG hotline?

IG Wertheimer: Correct. That is what he reported to me.

Other Speaker: Thank you.

(b) (6), (b) (7)(C) : Um, I think you may have touched on this in one of my last questions, but, uh, in regard to, um, information about (b) (6), (b) (7)(C) complaint, uh, or discussions with Mr. Depasquale regarding (b) (6), (b) (7)(C) complaint, is there any reason why that information was not included in your tes, Congressional testimony?

IG Wertheimer: So, I think I answered that. Mr. Depasquale did not discuss (b) (6), (b) (7)(C) to the best, I wasn't at the meeting with Mr. Depasquale and (b) (6), (b) (7)(C). So, all I know is what Mr. Depasquale told me. What he said was I only spoke with (b) (6), (b) (7)(C) about the failure to process her EEO complaint and asked him to make sure to allow her to file it. Therefore, it wasn't about her anonymous whistleblower. He didn't raise that with (b) (6), (b) (7)(C), he told me -

(b) (6), (b) (7)(C) : Mm hmm.

IG Wertheimer: - so, the discussion with Congress did not touch on that that subject was not **** up for discussion. It never ****.

(b) (6), (b) (7)(C) : Okay. Do you believe that, um, including that additional information, um, that you just discussed would have, um, would have possible made your testimony more complete regarding your conversations regarding FHA, FHFA OIG and the complaint as to not, ananonimity - excuse me - anonymity, uh, that was being discussed in your testimony to Congress?

Other Speaker: Uh, if I may, more complete than what? I mean, if, if, if there's a question she was asked that, in fairness, ought to have elicited that specific detail, we would be grateful if you would point us to it, but, to it, but complete ****, complete is a relative term, and, and there's nothing, just, respectfully in the question, or in the line of questioning that gives a sense of what complete is relative to.

(b) (6), (b) (7)(C) : If counsel wants to elaborate anything on that?

Other Speaker: Sure. I think as we have previously communicated, OIG is asking as, uh, neutral fact finders as part

of this investigation on behalf of the Integrity Committee, and that questions would be best directed to the Integrity Committee. Uh, since they are not a part of this call, um, are you saying that you would not like to respond to that question, Inspector General Wertheimer or Mr. Flood?

Other Speaker: No, I don't think I said that at all. I just said that it's, it's inherently extremely, uh, ambiguous question, and would illicit at best an ambiguous answer. Please do your best to answer that question.

IG Wertheimer: My understanding of the question that is being asked by Representative Waters and others was about who told the ****, who told anyone **** that she had filed a whistleblower complaint with the OIG. I, I, I was the one who told, and I owned that. I explained why. You may not agree with me. You may, whatever the differences we have, I thought I, I believed then, now, this is as **** as I could be. I gave all that information. Mr. Depasquale never disclosed to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had filed a whistleblower. So, I, I didn't see those questions as asking that information. So, so no. I didn't think, I thought I answered them fairly then. I did review the transcript. Mr. Depasquale reviewed the transcript. He never suggested to me that I had left something out.

(b) (6), (b) (7)(C) : Okay. Um, counsel, do you have any other questions, um, for Inspector General Wertheimer?

Other Speaker: Inspector General Wertheimer, thank you for your time today, and thank you, Mr. Flood. Uh, Inspector General, is there any questions that we haven't asked or any information that you haven't already provided, uh, today in our conversation that you would like to include?

Other Speaker: Um, that's two parts. Is there anything she would like to include? The answer to that is no. Um, is there any information, um, uh, that - of course, you haven't asked her for **** she provide, the, she will, as she has done from the beginning to answer a specific question, um, but, there is nothing of a global undefined amorphous nature that she intends to, to, uh, add to, uh, today's record.

(b) (6), (b) (7)(C) : Okay. Uh, (b) (6), (b) (7)(C)? Any, any more?

Other Speaker: I, um, I apologize. Inspector General Wertheimer, could you just respond for the record that the answer to those questions was no, as Mr. Flood just did?

Other Speaker: ****.

IG Wertheimer: Um, ****.

Other Speaker: Thank you.

IG Wertheimer: Uh, (b) (6), (b) (7)(C), anything from you?

Other Speaker: I have no further questions. Thank you.

Other Speaker: ****.

(b) (6), (b) (7)(C) : Um, well, that concludes our, uh, interview today. Um, Inspector General Wertheimer, thank you so much for taking time to meet with us today. I know things have been a little crazy in your schedule. Uh, Mr. Flood, thank you, also, for coordinating and, um, and getting this interview scheduled. We appreciate your time, and, um, your efforts. Um, if -

Other Speaker: Yes.

(b) (6), (b) (7)(C) : - you have anything else for us?

Other Speaker: Yeah. I do. Uh, thank you, and, I just want to say we appreciate the professionalism in conducting the interview. It doesn't always work that way. We're always critical ****. So, thank you.

(b) (6), (b) (7)(C) : Well, thank you for that. We appreciate, again, your time, and, um, if there are any questions you have for us in the future, please, uh, you know, reach out. Um, and, um, you all have a great afternoon.

Other Speaker: Thank you. Goodbye.

(b) (6), (b) (7)(C) : Thank you. Bye bye.

LW EX. 2

CIGIE IC CASE # 971



Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@cigie.gov

October 18, 2019

Via Email

Honorable Laura Wertheimer
Inspector General
Office of Inspector General
Federal Housing Finance Agency

(b) (6), (b) (7)(C)

Through

(b) (6), (b) (7)(C)

Integrity Committee Case 971: Notification of Investigation

Dear Inspector General Wertheimer:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons. In addition to determining whether a complaint falls within its authority and meets the threshold for investigation, the IC also determines whether, given the totality of the circumstances surrounding the complaint, further action is warranted.

On September 4, 2018, the IC received a complaint alleging that you engaged in substantial misconduct. Based on its thorough review of the complaint, the supporting documentation, and your response, the IC has determined to initiate an investigation into this matter. Specifically, the IC will investigate:

- 1) Whether you violated section 7(b) of the Inspector General Act of 1978, as amended, when you disclosed (b) (6), (b) (7)(C) identity and details about her anonymous complaint to senior agency officials without her consent.

- 2) Whether, on (b) (6), (b) (7)(C), you engaged in conduct undermining the integrity reasonably expected of an IG by omitting from your testimony to Congress the material fact that the Counsel to the IG, Mr. Leonard DePasquale, had disclosed (b) (6) identity, without her consent, to FHFA's (b) (6), (b) (7)(C) two weeks prior to your disclosure of her identity to the FHFA Director.

Please be aware, additional allegations may be investigated if they become known during the course of the investigation into this matter. At the request of the IC, the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) has been assigned to lead the investigation and prepare a draft Report of Investigation (ROI). An investigator from the HHS OIG may contact you for an interview regarding this matter.

Upon completion of its investigation, HHS OIG will provide the draft ROI to the IC. You will have the opportunity to comment on the draft ROI, including a transcript or summary memorandum of your interview, prior to final consideration of the ROI by the IC. You may submit additional statements or documents to the IC for its consideration, as long as the documents are not unnecessarily voluminous.

The final ROI, along with the findings, conclusions, and recommendations of the IC, if applicable, will be forwarded to the CIGIE Chairperson, the CIGIE Executive Chairperson, the FHFA Director, the President, and to the relevant congressional committees as required by the Inspector General Act, 5 USC App 3 Section 11 (d)(8)(A). You will be notified in writing when the IC completes its review of the complaint and the ROI, as well as when the IC forwards the ROI to the above individuals for review.

If you have questions regarding this matter, please contact the IC at: Attention: Integrity Committee, CIGIE, 1717 H Street, NW, Suite 825, Washington, DC 20006., or by email to: Integrity-WG@cigie.gov.

Finally, please take appropriate action to prevent retaliation, the perception of retaliation or other prohibited personnel practices from being taken against an individual based on the individual's cooperation in the IC Chairperson's investigation.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

cc: Joanne Chiedi

LW EX. 3

CIGIE IC CASE # 971



Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

1717 H Street, NW, Suite 825, Washington, DC 20006 • Integrity-Complaint@ciגיע.gov

October 25, 2018

Via Email

Laura Wertheimer

Inspector General

Federal Housing Finance Agency

(b) (6), (b) (7)(C)

Through

(b) (6), (b) (7)(C)

Integrity Committee Case 971: Request for Response

Dear Inspector General Wertheimer:

The Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) is charged with receiving, reviewing, and investigating, where appropriate, allegations of misconduct made against Inspectors General (IG) and designated members of an IG's staff. The IC takes action on allegations of wrongdoing that involve abuse of authority in the exercise of official duties or while acting under color of office; substantial misconduct, such as gross mismanagement, gross waste of funds, or a substantial violation of law, rule, or regulation; or conduct that undermines the independence or integrity reasonably expected of such persons.

The IC accepted for review the following complaint alleging wrongdoing on your part. Specifically, it is alleged you:

- 1) Abused your authority when you refused to investigate (b) (6), (b) (7)(C) allegations of wrongdoing against the Director of the Federal Housing Finance Agency (FHFA) and the misuse of the OIG hotline process, and you contributed to the FHFA Director's discriminatory harassment of (b) (6), (b) (7)(C) by initiating investigations into her instead.
- 2) Retaliated against (b) (6), (b) (7)(C) due to her disclosure of wrongdoing by you and the FHFA Director when you recommended FHFA withhold a promotion until (b) (6), (b) (7)(C) cooperated with requests for information in an unrelated matter, and when you attempted to intimidate (b) (6), (b) (7)(C) through the issuance of subpoenas and demands for her personal property.

- 3) Committed substantial misconduct when you ignored [REDACTED] request for anonymity and disclosed her identity without her consent, in violation of section 7(b) of the IG Act.
- 4) Engaged in conduct that undermines the independence and integrity reasonable expected of a covered person when you provided information about [REDACTED] investigation, including her anonymous complaint, to senior agency officials and when you decided to investigate [REDACTED] EEO allegations, despite being a named party to the complaint, and in spite of FHFA referring that complaint to an independent agency for investigation to avoid conflicts of interest.

The IC requests your response to these allegations within 20 days of receipt of this letter. Please note this is your opportunity to fully address the issues and provide any supporting documents prior to the IC deliberation. In your response, please include the answers to the following questions:

- 1) Did you or your office choose not investigate [REDACTED] allegations of wrongdoing against the FHFA Director and the misuse of the OIG hotline? If so, why? What was your role in this decision?
- 2) Did you or your office initiate an OIG investigation into [REDACTED]? If so, how many investigations? What were the allegations? What was the outcome? What was your role in these decisions?
- 3) Did you or someone in your office disclose [REDACTED] identity? If so, who made the disclosure? To whom was it made? When? Why? Did you or your office know that [REDACTED] had requested to remain anonymous? Did you or your office request [REDACTED] permission prior to disclosure? If not, why?
- 4) Did you or your office have any involvement in the decision to withhold [REDACTED] promotion? If so, what was the involvement and why? What was your role in advising management?
- 5) Under which investigation did your office issue IG subpoenas to [REDACTED] and what was the general justification for the use of subpoenas served on an employee?
 - a. How many subpoenas were issued and what was the specific justification for each subpoena?
 - b. Did [REDACTED] comply with any of the subpoenas? If not, did [REDACTED] provide an explanation for non-compliance? Did she request additional time to comply? Did you grant that time? If not, why?
 - c. Could you have obtained the requested information/documents from another source (i.e., the independent agency conducting the EEO investigation)? If so, did you or your office make that request?
 - d. What was the timing between the issuance of the subpoena and when you filed for enforcement? Did you consider filing the enforcement under seal? If not, why?

If so, why did that not occur?

- 6) Have you or someone in your office ever provided information about [REDACTED] allegations or investigation to senior agency officials, including the FIIPA Director? If so, why? What was your role? Did the agency official request the information?

You may submit your response and any questions you have regarding this request in writing to: email: Integrity-WG@CIGIE.GOV, or mailing address: Attention Integrity Committee, CIGIE, 1717 H Street, NW, Suite 825, Washington, DC 20006.

Sincerely,

(b) (6)

Scott Dahl
Chairperson
Integrity Committee

LW EX. 4

CIGIE IC CASE # 971

From: (b) (6), (b) (7)(C)
Sent: Monday, February 22, 2021 5:05 PM
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: U.S. Department of Health and Human Services Request for Assistance

Good afternoon (b) (6), (b) (7)(C).

By way of virtual introduction, my name is (b) (6), (b) (7)(C). I work as a criminal investigator for the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Investigations (OI), Special Investigations Branch.

I am conducting an investigation on behalf of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I would like to speak with your client, Federal Housing Finance Agency Inspector General Laura Wertheimer (IG Wertheimer), in relation to the responses IG Wertheimer provided to the IC on December 3, 2018 via Williams & Connolly LLP. Please advise of IG Wertheimer's availability to meet by close of business this Wednesday, February 24, 2021. I am available to speak with IG Wertheimer anytime on Thursday or Friday of this week. I would like to meet with IG Wertheimer on or before Friday, February 26, 2021. If we receive no response by you or IG Wertheimer by February 24, 2021, we will consider the lack of response to be a denial of our request for assistance.

This request is made for health oversight and/or law enforcement purposes and in connection with an official investigation being conducted by the HHS OIG. Any unauthorized disclosure of this request could jeopardize or impede the OIG's investigation. As such, you are instructed not to discuss with or disclose the existence of this request to anyone, including other persons within your office, department, agency, other HHS offices, departments or agencies, unless necessary to complete this request or without first obtaining permission from the requesting Special Agent.

I have copied (b) (6), (b) (7)(C) Special Investigations Branch and (b) (6), (b) (7)(C) Office of Counsel to the Inspector General. (b) (6), (b) (7)(C) is providing legal support to the Special Investigations Branch on this matter.

I appreciate your assistance concerning this request.

Kind regards,
(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Inspector
HHS/OIG/OI
Special Investigations Branch
(b) (6), (b) (7)(C)

Enclosure 3

(b) (6), (b) (7)(C)

April 14, 2022

Sent via Email Only

Kevin H. Winters
Chairperson
Integrity Committee
c/o Integrity-WG@cigie.gov

Re: Response to Integrity Committee Council of the Inspectors General on Integrity and Efficiency (CIGIE) Report of Investigation 971

Dear Chairperson Winters:

Please accept this correspondence as our client's response to the Integrity Committee Council of the Inspectors General on Integrity and Efficiency (CIGIE) Report of Investigation (ROI) dated February 17, 2022. We ask that you rescind the draft finding against Mr. Parker for three reasons: 1) the IC lacks statutory authority to issue a finding of wrongdoing against Mr. Parker because he is not a covered individual; 2) Mr. Parker did not fail to cooperate because neither the IC nor its investigator provided Mr. Parker with the information that would have permitted him to do so; and 3) the IC lacks statutory authority to issue a finding of wrongdoing against Mr. Parker because its investigation is untimely. Most importantly, and as the record demonstrates, Mr. Parker's actions at every step in this investigation were reasonable and undertaken pursuant to the advice of the FHFA-OIG's Office of Counsel (Agency counsel), with whom he is obligated to consult.

I. Statement of Facts

On April 14, 2020, Inspector General (IG) Laura Wertheimer informed Mr. Parker that she was delegating to him her authority to respond to a request for information (RFI) from the CIGIE-IC in connection with Case No. 971.¹ By its terms, IG Wertheimer's delegation was specific and self-limiting. Mr. Parker was authorized only "to receive, review—and as [he] deem[s] necessary and appropriate—respond on behalf of FHFA-OIG to all requests for information from the HHS OIG and/or the CIGIE IC, including requests for interviews, regarding CIGIE ICC 971."² At the time, and throughout the entire relevant period, Mr. Parker served as the Acting Deputy IG-Investigations. He was never appointed the Acting Inspector General of the FHFA; IG Wertheimer remained the Inspector General. Mr. Parker was not involved in the matter under investigation in Case No. 971.³

¹ The request was made on March 30, 2020, by the IC's investigator, an Inspector from the OIG of the Department of Health and Human Services (hereinafter, "the IC's investigator").

² See IG Wertheimer's Recusal and Delegation dated April 14, 2020.

³ IC Case No. 971 was an investigation into three allegations against IG Wertheimer and OIG Chief Counsel Leonard J. DePasquale arising out of their allegedly wrongful disclosure of a whistleblower's identity to FHFA officials. Mr. Parker was not involved in this matter.

(b) (6), (b) (7)(C)

Mr. Parker Obtains Advice from Agency Counsel

Mr. Parker determined that his first task was to understand the legal authorities under which he would perform his duties as the IG's delegee. Therefore, on April 15, 2020, Mr. Parker contacted FHFA-OIG (b)(6), (b)(7)(C). [REDACTED] informed Mr. Parker that he would receive legal advice from FHFA-OIG's Office of Counsel (FHFA-OC) in responding to the IC's March 30, 2020, RFI.⁴ As demonstrated below, Mr. Parker consulted with [REDACTED] regarding each of his interactions with the IC and its investigator.

The NPI Regulation

Prior to the IG's delegation of authority to Mr. Parker, FHFA-OC had represented FHFA-OIG to the IC. In doing so, FHFA-OC had asserted that FHFA's Nonpublic Information Regulation, 12 CFR Part 1214 (the NPI regulation),⁵ applies to information sought by the IC.⁶

By its terms, the NPI regulation covers information "created by, obtained by, or communicated to [the] employee in connection with the performance of official duties[.]"⁷ It "imposes a broad-based prohibition against unauthorized disclosure of any non-public information,"⁸ and it makes wrongful disclosure of NPI punishable by criminal prosecution and administrative sanctions.⁹ The NPI regulation has the force and effect of federal law¹⁰, and by its terms, it applies to Mr. Parker, an Agency employee.¹¹ The NPI regulation contains an exception for "Law Enforcement Proceedings." Based upon his consultation with FHFA-OC, Mr. Parker understood that this

⁴ Chief Counsel DePasquale, a subject of Case No. 971, recused himself from further dealing with the IC's March 30, 2020, RFI. Therefore, Mr. Parker received advice from [REDACTED]. [REDACTED] was assisted in this regard by other career attorneys in the OIG's Office of Counsel.

⁵ FHFA's NPI regulation can be found at 12 CFR Part 1214.

⁶ *See* Letter to IC Chairperson Scott Dahl from OIG [REDACTED] dated February 5, 2019, at p.3, n.4 ("As stated in our letter to the IC dated June 21, 2018, section 1214(d) of FHFA's non-public information regulation . . . provides that FHFA retains all privilege claims for non-public information . . . including . . . attorney-client work product.")

⁷ 12 C.F.R. §1214.1

⁸ *Id.* at §1214.2(b)

⁹ 12 C.F.R. §1214.3(c), "Any person that discloses or uses confidential supervisory information except as authorized under this part may be subject to the penalties provided in 18 U.S.C. 641 (Public money, property, or records) and other applicable laws. In addition . . . [FHFA] employees may be subject to appropriate administrative, enforcement, or disciplinary proceedings."

¹⁰ The NPI regulation was promulgated in accordance with the notice-and-comment provisions of the Administrative Procedure Act (APA) 5 U.S.C. §§ 551-559. The Supreme Court has held that regulations so promulgated, such as FHFA's NPI regulation, have the force of law. *See Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015) ("Rules issued through the notice-and-comment process are often referred to as 'legislative rules' because they have the force and effect of law . . ." (citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-03 (1979) (internal quotation marks omitted))). *See also Chrysler Corp.*, 441 U.S. at 295 ("It has been established in a variety of contexts that properly promulgated, substantive agency regulations have the 'force and effect of law.'").

¹¹ By its express terms, the NPI regulation applies to all FHFA-OIG employees 12 C.F.R. § 1214.1.

exception permits an FHFA-OIG employee to disclose NPI without the FHFA Director's approval—but only to the extent that disclosure is required by the IG Act.¹²

Thus, Mr. Parker understood the NPI regulation to apply both to him and the information sought by the IC, and that violations of it were punishable criminally and administratively. Moreover, he could release NPI to the IC only to the minimum extent required by the IG Act. Therefore, Mr. Parker understood that he was duty-bound to determine whether the IG Act required him to disclose the NPI sought by the IC. To do so, he sought to determine whether the IC was conducting its investigation in accordance with those sections of the IG Act which authorized such investigations.

The Time Frames Governing IC Investigations Contained in the IG Act

On its face, the record presented to Mr. Parker indicated that the IC's investigation had exceeded the statutory time frames set forth in section 11(d) of the IG Act. The Act requires the IC Chair to determine whether to refer a matter for investigation not later than 30 days after receipt,¹³ and to complete such an investigation not later than 150 days after referral.¹⁴ The Act provides only one option for obtaining an extension of the 30-day referral period: “[t]he 30-day period ... may be extended for an additional period of 30 days if the Integrity Committee provides written notice to the congressional committees described in paragraph (8)(A)(iii) that includes a detailed, case-specific description of why the additional time is needed to evaluate the allegation of wrongdoing.”¹⁵ Likewise, failing to complete an investigation within the prescribed 150-day period requires notification and briefing to Congress “every 30 days regarding the status of the investigation and general reasons for delay until the investigation is complete.”¹⁶

After consulting with FHFA-OC, and consistent with the advice provided to him, Mr. Parker considered that these statutory time frames were jurisdictional; that is, an investigation conducted outside of them was unauthorized. Therefore, Mr. Parker considered himself to be duty-bound to determine whether the IC had conducted its investigation to date in accordance with these time frames. After determining that neither he nor FHFA-OC possessed information or documents necessary to make that determination, Mr. Parker sought them from the IC's investigator.

OIG's Correspondence with the IC's Investigator

On April 28, 2020, the IC's investigator provided Mr. Parker with a copy of the CIGIE IC referral letter dated October 18, 2019.¹⁷ In relevant part, it said that the IC received the complaint underlying Case No. 971 on September 4, 2018.¹⁸ On the face of it then, the latest date the IC could have referred the matter for investigation in compliance with the statutory requirement (absent extension) was October 4, 2018 (30 days from the date of receipt). Likewise, the 150-day requirement for completion of the investigation was March 2019. The disconnect was obvious—by any calculation, absent an authorized extension, there was neither authority for the referral for

¹² 12 C.F.R. § 1214.4(c).

¹³ 5 U.S.C. App § 11(d)(7)(C)(i).

¹⁴ *Id.* § 11(d)(5)(B)(i).

¹⁵ *Id.* § 11(d)(5)(B)(ii).

¹⁶ *Id.* § 11(d)(7)(C)(ii).

¹⁷ Ex. 29.

¹⁸ Ex. 1.

investigation after October 4, 2018, nor authority for continuing an investigation after March 2019. It appeared, then, that the IC lacked authority to make a request for information on March 30, 2020.

Based on advice of FHFA-OC, Mr. Parker understood that FHFA's NPI regulation required him to bring this issue to the attention of, and request clarification from, the IC and its investigator. Otherwise, the NPI regulation could preclude any disclosure of any information at all, and, if that were the case, then Mr. Parker would be violating the regulation by making a disclosure to the IC.

OIG's May 5, 2020, Email to the IC's Investigator

On May 5, 2020, Mr. Parker, pursuant to advice from FHFA-OC, sent an email to the IC's investigator requesting such clarification and explaining the need for it. That email, which was composed by both Mr. Parker and FHFA-OC, said, in relevant part:

"[b]efore I determine whether FHFA-OIG may comply with your Request, it is incumbent upon me to assure myself that the Integrity Committee is currently authorized under § 11 to request information in connection with Case #971 ... [g]iven the lengthy interval between the IC's purported receipt of a complaint on September 4, 2018, and your recent issuance of the Request."¹⁹

Following this explanation, Mr. Parker asked for the relevant dates and documents corresponding to each statutory deadline—the dates of the referrals and initiations related to this investigation and any corresponding notices and/or briefings to Congress.

On May 8, 2020, IC Chairperson Scott Dahl, responded to Mr. Parker, "[t]he Integrity Committee has already communicated this information to your office multiple times, and we are disturbed that you are wasting time in this investigation with your frivolous requests." However, neither Mr. Parker nor the OIG had ever received the requested information from the IC's investigator. Nor had Mr. Parker or OIG ever received notice of any other facts that addressed the obvious timeliness concerns raised with the IC and its investigator. Indeed, no information available to Mr. Parker or FHFA-OC in any way altered their understanding that FHFA's NPI regulation required Mr. Parker to secure the requested clarification given that the record available to him indicated that the investigation was unauthorized.

OIG's May 15, 2020, Letter to the IC Chairperson

On the day he received it (May 8, 2020), Mr. Parker forwarded Chairperson Dahl's above-mentioned letter to FHFA-OC. On May 15, 2020, Mr. Parker replied to Chairperson Dahl's letter. That response, which was drafted by Mr. Parker with substantial assistance from FHFA-OC, provided a comprehensive legal analysis and OIG's concern that the investigation was unauthorized. Moreover, it placed the IC on actual notice that Mr. Parker had sought, and was relying upon, the advice of FHFA-OC in bringing OIG's concerns to the IC. As Mr. Parker explained:

¹⁹ Ex. 32.

My request is anything but frivolous: I sought, and continue to seek, information about whether the actions of the Integrity Committee (IC) meet the timeliness requirements of Section 11(d) of the Inspector General Act of 1978, as amended (IG Act). If the IG Act's deadlines have been exceeded, then the statutory authority of the IC to conduct this investigation has expired. *Career attorneys in FHFA Office of Counsel assigned to this matter have advised me that this information is needed in order to resolve the timeliness issue.*²⁰ (emphasis added)

Mr. Parker then proceeded to provide legislative history that demonstrated that Congress intended the deadlines to be jurisdictional, i.e., that they specifically imposed timeframes because Congress was “very concerned with the time taken by the IC to conduct and complete its investigations.”²¹ He explained that the language regarding the timeliness requirements was clear due to the use of “shall” and that, “[w]hen Congress intended a statutory timeframe for the IC to be aspirational,” it replaced “shall” with the phrase “to the maximum extent practicable” and created an aspirational standard.²² Mr. Parker further explained that Supreme Court precedent required adherence to the ordinary language of a statute and that the ordinary use of the word “shall” meant that “the IC is authorized to act only within these statutory deadlines.”²³ Additionally, Mr. Parker explained that the fact that CIGIE’s Legislative Committee advocacy for an extension of these deadlines during the legislative process,²⁴ as well as Mr. Dahl’s testimony before Congress that referred to these deadlines as “statutory deadlines,”²⁵ demonstrated CIGIE’s recognition that these deadlines were mandatory, not optional, and that no authority to investigate existed outside of such constraints.

The same day, Chairperson Dahl responded:

As I said in my letter to you on May 8, 2020, FHFA OIG should immediately cooperate and promptly provide all responsive documents requested by the Integrity Committee’s duly authorized investigators at HHS OIG. This is to notify you that your failure to comply timely with the pending requests and future requests from HHS OIG will be deemed by the IC as a refusal to cooperate and an obstruction of the IC’s lawful investigation by you as a covered official, and we will proceed to address this as wrongdoing under the IG Act and the IC Policies and Procedures.²⁶

Chairperson Dahl’s response is notable for several reasons. First, it neither responded to any issue raised by Mr. Parker nor provided any explanation as to how or why the IC’s investigation was authorized given the statutory deadlines identified by Mr. Parker and acknowledged previously by Chairperson Dahl during his sworn testimony before Congress. Chairperson Dahl also failed to assist Mr. Parker in resolving the situation in which the IC had placed him—caught between the duty

²⁰ Ex. 34.

²¹ *Id.* (citing S. Rep. 114-36 (May 5, 2015) at 11.

²² *Id.* (citing *Id.* §11(d)(8)(A)).

²³ *Id.* (citing *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102, 109 (1980)).

²⁴ *Id.* (citing June 11, 2015, IG Kathy Buller Letter to the Hon. Ron Johnson and the Hon. Thomas R. Carper, at 6, 1st and 2nd bullets.

²⁵ *Id.* (citing Statement of Scott S. Dahl to the U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Government Operations (September 18, 2019) at 7 ¶ 2.

²⁶ Ex. 35.

imposed upon him by the Agency's NPI regulation and his stated willingness to provide the IC with information. Finally, Chairperson Dahl ignored the fact that Mr. Parker was acting in his official capacity as the OIG's representative and doing so upon the advice of Agency counsel. Instead, Chairperson Dahl merely threatened Mr. Parker personally with "obstruction"—a federal crime.

OIG's May 20, 2020, Letter to the IC Chairperson

On May 20, 2020, Mr. Parker replied to Chairperson Dahl's letter. That reply, which was drafted by Mr. Parker with substantial assistance from FHFA-OC, explained the situation in which Mr. Parker was placed by the confluence of the IC's request for information and the Agency's NPI regulation. It also explained the reasonableness of his questions and the requirement to obtain the clarification he sought:

As an employee of Federal Housing Finance Agency (FHFA or Agency), Office of Inspector General (FHFA-OIG), I am bound by FHFA's regulatory prohibition on the unauthorized disclosure of nonpublic information (NPI) outside of the Agency. That regulation authorizes FHFA-OIG to disclose NPI only to the minimum extent required by the Inspector General Act of 1978, as amended (IG Act). Unauthorized disclosures of NPI are punishable both criminally and administratively. To determine whether the IG Act requires a disclosure of NPI and, therefore, whether I may authorize the provision of relevant, responsive, non-privileged materials sought by the Integrity Committee (IC), I must first determine whether the instant IC investigation is itself authorized under Section 11(d) of the IG Act.

...

In my two prior written requests, I sought from you factual data that would enable me to determine whether, in the investigation at issue, the IC has met the statutory deadlines set forth in Section 11(d). That data is under your control. If it establishes the IC's investigation is timely, it will help me to determine whether the IC's investigation is authorized and, therefore, whether I am permitted by FHFA's NPI regulation to provide relevant, responsive, non-privileged information in response to the IC's request of March 30, 2020.

...

You may disagree with my legal position concerning the meaning of the statutory deadlines in Section 11(d), but my assertion of that position does not amount to "obstruction", even if you say otherwise.²⁷

Mr. Dahl did not respond to OIG's March 2020, letter.

Instead, on the same day (May 20, 2020), the IC's investigator sent Mr. Parker a follow-up email requesting the same documentation. In response, Mr. Parker, pursuant to the advice of FHFA-OC, repeated the same concern and request for clarification:

As I have explained in my prior correspondence, as an employee of FHFA I am bound by its nonpublic information (NPI) regulation. The information you seek from me is

²⁷ See May 20, 2020, Letter from Parker to Dahl, enclosed, which does not appear to be included in the Draft Report.

covered by that regulation. As it applies to your request, the regulation precludes me from releasing NPI to you unless doing so is required under the IG Act. That, in turn, requires me to determine whether your investigation into Case No. 971 is authorized under Section 11(d) thereof. I explained my reasons for believing it is not in my aforementioned correspondence, so I won't restate them here.

I have asked three times for certain factual information with which to determine whether your investigation is still authorized under the IG Act. To date, I have not received anything from you. I hope you'll send it soon.²⁸

The IC's investigator did not respond.

On June 5, 2020, in your capacity as the new IC Chairperson, you sent Mr. Parker yet another letter reiterating the same request for information without addressing the issue Mr. Parker had repeatedly raised. You stated:

As you are aware, the IC previously requested that the Federal Housing Finance Agency Office of Inspector General (FHFA OIG) provide information relevant to this investigation. Presumably based on your direction, the FHFA OIG has yet to comply. To be clear, we view you as the decision-maker on this matter, and therefore subject to IC jurisdiction. On May 5, 2020, you advised IC investigators that Inspector General (IG) Wertheimer has recused herself from this matter and that you had been authorized by the IG to respond to requests from the IC. Accordingly, we construe you to be acting in the role of the FHFA IG for purposes of this investigation. Insofar as you are serving in this acting capacity, you are subject to IC oversight. See Integrity Committee Policies and Procedures § 2(D).

The IC expects your compliance, or unequivocal commitment to do so, by close of business, June 9, 2020. Accordingly, if such unequivocal confirmation is not received by close of business on that date, your course of conduct in this matter will be assessed for wrongdoing under the Integrity Committee Policies and Procedures. As the IC has not been specifically advised that [redacted] FHFA OIG (b) (6), (b) (7)(C) [redacted] has been recused from this matter, we are providing a courtesy copy of this letter for her consideration.²⁹

You did not address any of the concerns Mr. Parker raised on behalf of OIG in any of his previous correspondence with the IC and its investigator.

²⁸ Ex. 36.

²⁹ Ex. 37.

OIG's June 9, 2020, Letter to IC Chairperson Winters

Mr. Parker again consulted with FHFA-OC and responded pursuant to legal advice on June 9, 2020:

I reiterate, for the fourth time, that I stand ready to provide information to the Integrity Committee (IC) in response to its request, provided that I am authorized to do so under my Agency's non-public information (NPI) regulation.

Mr. Parker further explained that he was not subject to CIGIE jurisdiction, clarifying that IG Wertheimer did not designate him the Acting IG of FHFA and that CIGIE has no investigative authority over him.³⁰ You did not respond.

On July 8, 2020, the IC's investigator asked Mr. Parker if his "delegated authority to respond on behalf of the FHFA OIG is limited to documentary evidence or does it also include access to witnesses?"³¹ Mr. Parker again responded that his delegation of authority covered information possessed by individuals—but that, again, neither the investigator nor the IC Chairpersons had clarified whether their investigation is timely. The IC's investigator did not respond.

II. The IC Lacks Statutory Authority to Issue a Finding of Wrongdoing Against Mr. Parker Because He is Not a Covered Individual.

The IG Act limits the IC's investigatory authority to specific, covered individuals: IGs, individuals who report directly to IGs, and staff members designated by IGs.³² Mr. Parker is not now, nor has he ever been, one of these covered individuals. He did not report directly to (former) IG Wertheimer, nor does he report directly to current IG Brian Tomney. Neither (former) IG Wertheimer nor IG Tomney designated Mr. Parker as a staff member subject to the IC's jurisdiction. The IC therefore lacks authority to issue a finding of wrongdoing against Mr. Parker.

The IC lacks any authority—statutory or otherwise—to expand the class of individuals whose conduct it is authorized to investigate. The Office of Legal Counsel (OLC) has ruled that the IC's investigatory jurisdiction is circumscribed by the authority under which it conducts its investigations.³³ In this case, that authority is contained in § 11(d)(4)(B) of the IG Act. The Act's grant of authority is precise and self-limiting: it extends only to alleged wrongdoing by the covered individuals specified above. The Act makes no provision for the IC to increase the class of covered individual in any manner; neither does it confer upon the IC Chair authority to parse limited delegations of authority and deem the delegees Acting or Interim IGs solely to render them susceptible to the IC's jurisdiction.

³⁰ Ex. 38.

³¹ Ex. 39.

³² 5a U.S.C. § Section 11(d)(4)(B).

³³ See 30 O.L.C. 122, 126 (2006) (holding that the IC could not extend its investigatory jurisdiction beyond the terms of the Executive Order under which it then conducted investigations: "[I]f the Integrity Committee's investigative power is entirely a product of Executive Order 12993. It therefore has only such authority to investigate that is granted by that order.")

Neither is such authority conferred upon the IC Chair by § 2(D) of the IC's Policies and Procedures (ICP&P).³⁴ The IG Act authorizes the IC to adopt "additional policies and procedures necessary to ensure fairness and consistency in [IC investigations]." Thus, the Act does not authorize the IC to adopt such policies as would enable it to investigate individuals in addition to those identified by Congress. Nevertheless, the IC has adopted § 2(D) of the ICP&P which provides that the IC shall have "authority" over, among others, anyone serving as an Acting IG.

Even assuming § 2(D) can provide the IC with authority to investigate Acting IGs, it does not, on its face, provide the IC with authority to designate someone an Acting IG for the purpose of gaining investigative authority over that person. Congress has granted that authority to the President, "and only the President," in the Vacancy Act,³⁵ making it perfectly clear that the IC Chair does not have that authority.

Moreover, Mr. Parker's exercise of the limited authority delegated to him did not transform him into the Acting IG, a position that he does not and cannot legally encumber. Under these circumstances, it cannot be said that Congress empowered you to designate OIG employees Acting or Interim IGs because, among other things, doing so would result in the creation of entirely new lines of succession within the affected OIGs, and there is no evidence Congress intended this result.

III. Mr. Parker Did Not Wrongfully Fail to Cooperate in the Investigation at Issue Because Neither the IC nor Its Investigator Provided Mr. Parker With the Information that Would Have Permitted Him to do so

The basis for the IC's Finding against Mr. Parker is that he did not cooperate in its investigation. His non-cooperation, according to the IC, consisted of the following: "[Mr.] Parker informed [the IC's] investigator[] and the IC that FHFA-OIG would not make available any of the documents requested . . . in this investigation, remaining steadfast in his conviction that the IC does not have authority to conduct this investigation."

In reality, the IC's Finding is both factually inaccurate and unsupported by the record in this case, i.e., the exchange of correspondence between FHFA-OIG (Mr. Parker) and the IC (its investigator and successive IC Chairpersons) over the period May 5, 2020, to July 8, 2020. That record, which is discussed in section I of this letter, establishes clearly that Mr. Parker never refused to make information available to the IC. Rather, he clearly explained the situation he faced: OIG's career attorneys advised him that the information sought by the IC was covered by the Agency's NPI

³⁴ Section 2 of the ICP&P, "Persons within the IC's Authority" limits the IC to investigating "allegations of wrongdoing against any of the following individuals ('Covered Persons'): A. An IG; B. A staff member of an Office of Inspector General ('OIG') whose position is designated under section 4 of these Policies ('Designated Staff Member'); . . . and D. Anyone serving in an Acting or Interim capacity in a position set forth in A through C of this subsection." Section 2(D) of the ICP&P does not confer upon the IC Chair authority to investigate Mr. Parker because the ICP&P does not have the force and effect of law. In *Perez v. Mortg. Bankers Ass'n*, the Supreme Court reiterated long-standing principles under the APA that "[r]ules issued through the notice-and-comment process . . . have the 'force and effect of law'" and "[i]nterpretive rules do not have the force and effect of law and are not accorded that weight in the adjudicatory process." The ICP&P were not issued pursuant to the notice-and-comment process and, therefore, do not have the force and effect of law.

³⁵ 5 U.S. Code § 3345(a)(3) Acting Officer, "... the President (and only the President) may direct an officer or employee of [an] Executive agency to perform the functions and duties of the vacant office temporarily in an acting capacity . . ."

regulation³⁶ —a position they had asserted to the IC long before Mr. Parker’s involvement in Case No. 971.³⁷ Further, he faced criminal and administrative sanctions if he disclosed information to the IC before establishing that an exception to the NPI regulation permitted him to do so. He merely wanted answers to his questions which would enable him to determine how to proceed. Neither the IC nor its investigator ever acknowledged his questions, much less provided him answers. This was the extent of Mr. Parker’s “failure to cooperate.”

Mr. Parker’s Actions Do Not Amount to Misconduct

In considering whether an employee has committed misconduct by failing to cooperate in an investigation, the Merit Systems Protection Board has explained that agencies must “consider surrounding circumstances, including the appellant’s reservations regarding the legality of the instruction.”³⁸ “[T]he Board has found that an exception to compliance exists when compliance would “place the employee in a clearly dangerous situation, or when complying with the order would cause him irreparable harm.”³⁹

In *Pedeleose*, the Board addressed a situation in which an employee did not cooperate in an investigation. Instead, he raised concerns about its legality. The Board found that raising such concerns did not amount to misconduct.

The employee questioned the credentials of the investigator and “stated that he would not speak with [the investigator] until [the investigator] gave him a copy of the appointment letter.” The investigator refused to do so. The employee’s management then provided the employee the appointment letter and directed the employee to cooperate. The employee stated he would not do so because the direction was an illegal order. The employee believed the same matter was under investigation by the Agency’s OIG, and that management’s investigation would interfere with the OIG investigation. The Agency then appointed another investigator, and the employee once again said he would not cooperate because the OIG was conducting an investigation into the same matter and management’s investigation was retaliatory. Management did not respond to the employee’s concern or otherwise explain how it could conduct an investigation even as the Agency’s OIG was doing so. Further, the employee asked the OIG whether his management’s investigation was lawful, and the OIG replied that it had “no idea.”⁴⁰

The Board found that, although the Agency was authorized to conduct the investigation, in these circumstances, the employee’s refusal to participate in it was justified. The Board explained that the “obey now, grieve later” rule applies when “(1) the agency and its mission may be harmed by the employee’s failure to act; and where (2) the employee may be mistaken in his belief.”⁴¹

³⁶ As set forth in section 1 of this letter, FHFA-OC career attorney participated fully in developing the correspondence that comprises the record in this matter.

³⁷ See n. 6, *supra*.

³⁸ *Pedeleose v. Department of Defense*, 107 M.S.P.R. 191 (2007) (citing *Brown v. Department of Justice*, 31 M.S.P.R. 211 (1986), citing *Brown v. Department of Justice*, 790 F.2d 89 (Fed. Cir. 1986) (Table)).

³⁹ *Id.* (citing *Cooke v. U.S. Postal Service*, 67 M.S.P.R. 401, 407-08, *aff’d*, 73 F.3d 380 (Fed. Cir. 1995) (Table)).

⁴⁰ *Id.*

⁴¹ *Id.*

The Board went on to find that the record in the *Pedelease* case contained neither evidence of harm to the Agency occasioned by the employee's refusal to cooperate, nor evidence that the employee "was mistaken in his belief that the investigation, if not illegal, might conflict with the IG's investigation into similar matters." In so finding, the Board stressed that the appellant raised legitimate concerns about the investigation in which he was initially asked, and ultimately ordered, to participate. He sought the advice of the IG and did not get a definitive answer about whether the investigation was lawful. The Board also found that:

...
[The] failure [to address the appellant's concern regarding the legality] appears disingenuous against the backdrop of the appellant's repeated statements of concern to [the Agency] about the potential conflict with the IG's investigation. By not conveying the IG's views to the appellant, Plourde and Scantlebury essentially cut off the means by which the appellant could have complied with their investigation and orders without fearing interference with the IG's investigation.

...
[N]o one involved with the agency's investigation gave the appellant the information that would have allowed him to cooperate in the investigation in the manner that [management] ordered.⁴²

Accordingly, the Board found the charge of failure to cooperate in the investigation unsupported.

Here, as in *Pedelease*, the record (the "Draft ROI") does not contain evidence of harm to the IC or its investigation occasioned by Mr. Parker's course of action.⁴³ Neither does the record contain evidence that Mr. Parker was mistaken in his belief that the investigation might not be authorized, thereby precluding him from disclosing the NPI sought by the IC.

The record clearly reflects that any harm to the IC's investigation may be traced to the actions of the IC Chairpersons and the IC's investigator. Their steadfast unwillingness to answer Mr. Parker's reasonable (and repeated) requests for information that would facilitate his provision of information is at the root of any claimed harm to their investigation. The Chairpersons's actions placed Mr. Parker in a situation in which he could not comply with their request without violating FHFA's NPI regulation. Had the Chairpersons satisfied his concerns, he would have been in a position to provide the information they requested.

Moreover, Mr. Parker's actions were far more reasonable than the employee in *Pedelease*. As an initial matter, the Draft ROI wrongfully asserts that Mr. Parker, "informed HHS-OIG investigators and the IC that FHFA-OIG would not make available *any* of the documents requested by HHS-OIG in this investigation, remaining steadfast in his conviction that the IC does not have authority to conduct this investigation." As the record, set forth in section 1 of this letter makes clear, Mr. Parker never made any such statement. Rather, Mr. Parker advised that he "st[ood] ready to provide information to the Integrity Committee" upon clarification as to the authorization for the

⁴² *Id.*

⁴³ Indeed, the record is devoid of evidence that Mr. Parker would have refused to disclose information to the IC if it would have responded to his repeated inquiries as to its jurisdictional providence.

investigation.⁴⁴ He did not state that the IC's investigation was unauthorized. Rather, he explained repeatedly that the record available to him appeared to indicate that the investigation *may be* untimely and, therefore, unauthorized. He sought clarification of the issue from the IC, but none was provided to him.

Mr. Parker's Actions Were Reasonable

On their face, Mr. Parker's concerns were legitimate—not only are the statutory deadlines clear, but the consequences for disclosing more non-public information than required were severe to both FHFA OIG and to Mr. Parker personally. He was not the subject of the underlying investigation. He had no reason to question the IC's authority to conduct it apart from the advice he received from FHFA-OC and his understandable concern that FHFA's NPI regulation prohibited him from disclosing information before clarifying the investigation's jurisdictional soundness. In this regard, Mr. Parker was not adopting a new position; rather following his Agency's stated position taken as early as 2018.⁴⁵

We are unaware of any analogous situation in which any Agency has charged an employee with failure to cooperate with an investigation when the employee was following advice from Agency counsel as to the cooperation.⁴⁶ In any event, Mr. Parker conveyed these concerns clearly; the record is unclear as to why Mr. Parker's concerns were "mistaken." Even if he and his counsel were mistaken, neither the IC nor its investigator ever explained why that was the case. Thus, as in *Pedeleose*, "[n]o one involved with the ... investigation gave [Mr. Parker] the information that would have allowed him to cooperate in the investigation."⁴⁷

Moreover, the IC's repeated, conspicuous refusal to either provide the relevant dates or explain why such deadlines were irrelevant to its authority only serves to underscore the concern. If Mr. Parker's concerns were "frivolous," then explaining them away would have been simple. The IC did not deign to do so. To date, we are unaware of any guidance on this issue Mr. Parker raised on the advice of FHFA-OC counsel that would dispel such concerns. Even the Draft ROI fails to do so. It merely quips "FHFA-OIG claimed for itself the authority to decide whether it would comply with an IC investigation." The reference to "FHFA-OIG" as a whole demonstrates the IC's recognition of the fact that Mr. Parker's position was not in any way a personal issue—it was, indeed, a position taken by FHFA-OIG as a whole. Additionally, Mr. Parker did not bestow such authority upon himself. The former IG directed Mr. Parker to "decide whether [FHFA-OIG] would comply" with the request for information.⁴⁸ If the IC has an issue with the IG's authorizing another official to decide whether to comply with a request for documentation, then it should take that issue up with the IG, not Mr. Parker.

⁴⁴ See Ex. 38.

⁴⁵ See n. 6, *supra*.

⁴⁶ The only matters in which an employee was found to have committed misconduct related to failing to cooperate upon advice of counsel involves reliance on personal counsel that the employee chose to represent him. Mr. Parker had no choice in the matter – he is obligated by virtue of his position to follow advice from his appointed counsel. See *Weston v. Dept. of Housing and Urban Development*, 724 F.2d 943 (Fed. Cir. 1983); *Jones v. Dept. of Transportation*, 83 F.M.S.R. 5441 (1983).

⁴⁷ *Pedeleose v. Department of Defense*, 107 M.S.P.R. 191 (2007) (citing *Brown v. Department of Justice*, 31 M.S.P.R. 211 (1986), citing *Brown v. Department of Justice*, 790 F.2d 89 (Fed. Cir. 1986) (Table)).

⁴⁸ –See Report of Investigation, conceding the authority was delegated to Mr. Parker.

It should not undertake to unilaterally expand its investigatory jurisdiction to punish Mr. Parker for attempting to consciously and lawfully perform his duty.

Over the course of a lengthy correspondence with Mr. Parker, the IC never addressed Mr. Parker's jurisdictional concerns; rather, it breezily presumed its own jurisdiction where that jurisdiction was questionable at best. We come again full circle. On the advice of counsel, Mr. Parker merely sought an explanation as to how the investigation could possibly be authorized given its apparent untimeliness—and how he could, consistent with his legal obligations, provide the information the IC requested. We are unaware of any guidance – caselaw, IC policy, or otherwise – that demonstrates Mr. Parker's concern and reliance on the advice of the FHFA-OC was mistaken. Mr. Parker had nothing to conceal personally and was neither a subject nor witness to any aspect of this investigation.

Mr. Parker's Actions Were Taken in Reliance Upon the Advice of FHFA-OC Counsel, Negating the Finding that he Wrongfully Failed to Cooperate in the IC's Investigation

Mr. Parker's reliance upon FHFA-OC's assistance in creating the record in this case is significant. The District Court for the District of Columbia, the jurisdiction in which Mr. Parker carried out his duties under IG Wertheimer's delegation, has held that reliance on counsel can be a defense against criminal liability. In *SEC v. Prince*, 942 F.Supp.2d 108, 138 (D.C.D.C. 201), the Court held that "[t]he advice-of-counsel defense requires the defendant to establish four elements: he must have (1) made complete disclosure to counsel; (2) requested counsel's advice as to the legality of the contemplated action; (3) received advice that it was legal; and (4) relied in good faith on that advice."⁴⁹ It stands to reason that if following the advice of counsel can shield an individual from criminal liability, then it can also shield an individual from an administrative finding such as the one at issue here.

Mr. Parker's conduct satisfied each element of the test prescribed by the District Court in *SEC v. Prince*. Specifically, and as evinced in section 1 of this letter, Mr. Parker (1) disclosed everything regarding the IC communications to FHFA-OC; (2) requested and received legal advice regarding each of his interactions with the IC; (3) drafted each letter he sent in close coordination with, and at the direction of, FHFA-OC; and (4) sent the letters in question back to the IC after they were seen and approved by FHFA-OC. There is no evidence to the contrary in the Draft ROI. Further, the Draft ROI fails to take into account Mr. Parker's reliance on the advice of counsel. Given that Mr. Parker advised the IC of this fact in writing⁵⁰, this omission is inexplicable. Mr. Parker's reliance upon the advice of FHFA-OC undercuts completely the Finding that he wrongfully failed to cooperate in the IC's investigation.

⁴⁹ *SEC v. Prince*, 942 F.Supp.2d 108, 138 (D.C.D.C. 2013) (quoting *SEC v. Zacharias*, 569 F.3d 458, 467 (D.C. Cir. 2009)); see also *United States v. Gray-Burris*, 920 F.3d 61, 66(D.C. Cir. 2019) (defendant is entitled to a jury instruction on the advice-of-counsel defense when he introduces evidence that (1) "he relied in good faith on the counsel's advice that his course of conduct was legal," and (2) "he made full disclosure of all material facts to his attorney before receiving the advice at issue.") (quoting *United States v. DeFries*, 129 F.3d 1293, 1308 (D.C. Cir. 1997).

⁵⁰ See n. 20, *supra*.

IV. The IC Lacks Statutory Authority to Issue a Finding of Wrongdoing Against Mr. Parker Because its Investigation is Untimely

We note that the IC has refused to address our concern that it lacks authority to issue a finding against Mr. Parker because the investigation as it pertains to him is untimely.⁵¹ As explained at length in the foregoing communications, the timelines in Section 11 of the IG Act are jurisdictional, and actions taken in excess of them are unauthorized.

The IC stated that on August 31, 2020, it expanded the scope of its investigation to include Mr. Parker's conduct. The date of the original complaint is unclear, but Mr. Parker has provided the same response to the IC's investigator and the IC since May 2020. The IC's last stated deadline to respond was June 9, 2020. By any calculation, the 30-day deadline for referral for investigation, absent extension, ended in July 2020. The Draft ROI indicates that the IC's investigator did not receive the referral for investigation until August 31, 2020. We therefore question whether the IC received an extension for its referral and, if not, what authority exists to have investigated this complaint in the first place.

Additionally, the 150-day deadline to complete the investigation ended on January 28, 2021. The record does not identify the IC's authority to continue its investigation beyond this deadline, let alone into 2022. The delay is baffling – the issue is straightforward, and Mr. Parker's responses were clear and precise. We are unaware of any possible justification for failing to complete an investigation by the January 2021 deadline given that the last communication occurred in July 2020.

In fact, no investigation appears to have taken place at all. The IC's investigator did not communicate further with Mr. Parker or any other FHFA-OIG official or otherwise address his concerns regarding the lack of jurisdiction. In particular, Mr. Parker repeatedly expressed that he was acting pursuant to advice from FHFA-OC, and yet the IC's investigator did not even attempt to interview any attorney assigned to that Office. Instead, the IC's investigator merely wrote two summary paragraphs, none of which convey any investigative activity apart from noting a referral to the Chief of the Public Corruption and Civil Rights Section of the U.S. Attorney's Office for the District of Columbia, who, unsurprisingly, declined the matter for criminal prosecution. We are unaware of any basis for having delayed completion of its "investigation" until over a year past the deadline.

V. Conclusion

Disparaging Mr. Parker through a report likely to be made public would irreparably and unfairly harm his reputation. Mr. Parker has served his country in military and civilian service for over 39 years. He has served in combat and devoted his career thereafter to public service. His entire life has demonstrated a reverence for following the chain of command. This situation is unlike any "failure to cooperate" charge we have ever seen – through our personal experience and in review of precedent. It is not even a close call – Mr. Parker's actions were exceedingly reasonable in the circumstances present here. Further, any guidance the IC needs to provide to the OIG community on the issue with

⁵¹ As demonstrated in Mr. Parker's letters to IC Chair Scott Dahl, the statutory timeframes within which each phase of an IC investigation must be completed are jurisdictional. In his testimony before the committee, Mr. Dahl conceded they are "deadlines." Those letters, and Mr. Dahl's testimony, are enclosed.

Letter to Chairperson Winters

April 14, 2022


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respect to these statutory deadlines does not require a baseless charge against Mr. Parker. We respectfully request that you revise the Draft Report accordingly and rescind this finding.

Thank you for this opportunity to respond and your consideration. We are available to provide any further information that may assist you in making your decision at your convenience.

Sincerely,

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the signature area. The text "(b) (6), (b) (7)(C)" is printed in red at the top of the redaction.

Enclosure

**OFFICE OF INSPECTOR GENERAL**

Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

May 20, 2020

Inspector General Scott Dahl
Chairperson, Integrity Committee
Council of the Inspectors General for
Integrity and Efficiency
1717 H Street NW
Washington, D.C. 20006
Integrity-WG@oigie.gov

By Electronic Mail

SUBJECT: CIGIE Integrity Committee (IC) Case #971

Mr. Dahl,

This letter responds to your letter of May 15, 2020.

As an employee of Federal Housing Finance Agency (FHFA or Agency), Office of Inspector General (FHFA-OIG), I am bound by FHFA's regulatory prohibition on the unauthorized disclosure of nonpublic information (NPI) outside of the Agency.¹ That regulation authorizes FHFA-OIG to disclose NPI only to the minimum extent required by the Inspector General Act of 1978, as amended (IG Act).² Unauthorized disclosures of NPI are punishable both criminally and administratively.³ To determine whether the IG Act requires a disclosure of NPI and, therefore, whether I may authorize the provision of relevant, responsive, non-privileged materials sought by the Integrity Committee (IC), I must first determine whether the instant IC investigation is itself authorized under Section 11(d) of the IG Act.

As you testified before Congress, the IG Act establishes statutory deadlines that govern investigations undertaken by the IC. You also testified that the IC's "purpose" is "to protect the

¹ See generally 12 C.F.R. Part 1214.

² *Id.* § 1214.4(c).

³ *Id.* § 1214.3(f).

integrity of the IG community”, which you characterize as a “solemn responsibility.”⁴ Fulfilling that solemn responsibility requires the IC to conduct its investigations in strict accordance with the statutory deadlines set forth in plain language in Section 11(d). Both the Council of Inspectors General on Integrity and Efficiency (CIGIE) and the IC are creatures of the IG Act. Each has only the authority provided under the Act, and Congress has provided neither one the authority to ignore the plain language deadlines that govern IC investigations.

In my two prior written requests, I sought from you factual data that would enable me to determine whether, in the investigation at issue, the IC has met the statutory deadlines set forth in Section 11(d). That data is under your control. If it establishes the IC’s investigation is timely, it will help me to determine whether the IC’s investigation is authorized and, therefore, whether I am permitted by FHFA’s NPI regulation to provide relevant, responsive, non-privileged information in response to the IC’s request of March 30, 2020.

You assured Congress that, as the IC Chairperson, you are committed to transparency.⁵⁶ Unfortunately, you have not kept faith with that commitment: you have refused my two requests to produce the facts that would establish whether, in the investigation at issue, the IC has adhered to the statutory deadlines in Section 11(d).⁷ Instead, you have attempted to coerce me into disregarding my duties under FHFA’s NPI regulation by leveling threats of “obstruction” and, presumably, of placing me under IC investigation for “wrongdoing.” Communicating those threats to me—a third party seeking to meet his duties as an FHFA-OIG employee—is inappropriate and appears to run afoul of your professional obligations as an attorney-at-law and the IC Chairperson.⁸

As a former prosecutor, you must be aware that obstruction is a crime. *See e.g.*, 18 U.S.C. § 1505, *Obstruction of proceedings before departments, agencies, and committees.*

⁴ Statement of Scott S. Dahl to the U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Government Operations (September 18, 2019) (Dahl Statement to Congress) at 1, 7.

⁵ Dahl Statement to Congress, *supra*, at p. 4-5 (“Even with these improvements, the IC recognizes that it must do more to increase transparency.”).

⁷ To be clear, asserting repeatedly that the investigation at issue is authorized does not address my concern. In the absence of the facts I have requested, it is not clear that your unilateral declaration of authority is supported by law.

⁸ State licensing authorities have determined that threatening to present criminal, administrative, or disciplinary charges to gain an advantage in a disputed civil matter constitutes professional misconduct. *See e.g.*, California Rules of Professional Conduct, Rule 5-100(A) (“A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute.”); New York State Unified Court System Rules of Professional Conduct, Rule 3.4 (“A lawyer shall not. . . (e) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.”); Texas Disciplinary Rules of Professional Conduct, Rule 4.04(b) (“A lawyer shall not present, participate in presenting, or threaten to present. . . (1) criminal or disciplinary charges solely to gain an advantage in a civil matter.”); and Illinois Rules of Professional Conduct, Rule 8.4 (“It is professional misconduct for a lawyer to: . . . (g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.”).

Tellingly, you identify no provision of the IG Act, nor of any other law, that vests in you the authority to determine that my good faith efforts to understand whether the IC has met its statutory deadlines amount to obstruction. You may disagree with my legal position concerning the meaning of the statutory deadlines in Section 11(d), but my assertion of that position does not amount to “obstruction”, even if you say otherwise.

Further, your threats to address my assertion as if it constituted “wrongdoing” and, presumably, to investigate me on that basis, are similarly unauthorized. The IC has no inherent investigatory authority; as a creature of statute, it has only that authority granted to it by Congress. Congress deliberately limited the IC’s authority by imposing the deadlines contained in Section 11(d). Alerting you to the fact that the IC appears to have exceeded these deadlines, and, therefore, its authority does not constitute “wrongdoing” under the IG Act. Thus, there is nothing in my conduct for you to investigate. Moreover, I am not among the individuals you are authorized to investigate under the IC’s Policies and Procedures: I am not an Inspector General; I do not report directly to one; and I have not been designated a covered person by IG Wertheimer.⁹

I reiterate, for the third time, my request for the information set forth in the enclosure to this letter. Rest assured: your improper and unseemly threats will not foreclose my legitimate efforts to determine whether the IC retains authority under the IG Act to continue its investigation into Case #971. I continue to hope for an amicable resolution to this unnecessary dispute, which serves only to delay this matter’s eventual resolution.

Very truly yours,

RICHARD PARKER

Digitally signed by RICHARD PARKER
Date: 2020.01.20 14:13:09 -0400

Richard Parker
Acting Deputy IG for Investigations
FHFA-OIG

Encl. (1)

cc: Hon. Michael Horowitz, DOJ Inspector General & CIGIE Chair

⁹ IG Act § 11(d)(4)(B); IC Policies and Procedures 2018 (January 2018, with April 13, 2018 update) at p.4.

Enclosure

Please provide the following information, all of which is essential for a full understanding of whether the IC retains investigatory authority in Case #971:

1. The date(s) during which the IC's Allegation Review Group reviewed the "complaint" which gave rise to the three allegations against IG Wertheimer and Mr. DePasquale, which allegations are set forth in Mr. Dahl's letter to Mr. DePasquale dated May 20, 2019, and Mr. Dahl's letter to IG Wertheimer dated October 18, 2019.
2. The date upon which the Allegation Review Group referred to the IC, rather than the DOJ-PIN or the OSC, the complaint which gave rise to the three allegations against IG Wertheimer and Mr. DePasquale, which allegations are set forth in Mr. Dahl's letter to Mr. DePasquale dated May 20, 2019, and Mr. Dah's letter to IG Wertheimer dated October 18, 2019.
3. The date upon which the IC determined the three above-referenced allegations against IG Wertheimer and Mr. DePasquale should be investigated.
4. The date upon which the IC referred to its Chairperson for investigation the three above-referenced allegations against IG Wertheimer and Mr. DePasquale.
5. A copy of any request or notice issued by the IC to extend the time within which to determine whether to refer the three above-referenced allegations to the IC Chairperson to initiate an investigation.
6. A copy of any response to such a request or notice received by the IC.
7. The date upon which the investigation into the three above-referenced allegations was initiated.
8. A copy of any requests or notices issued by the IC to extend the time within which to complete the investigation of the three above-referenced allegations.
9. A copy of any briefings provided to any Committees of Congress regarding the status of the investigation into the above-referenced allegations and the general reasons therefor

(b) (6), (b) (7)(C)

April 14, 2022

Sent Via Email Only

Kevin H. Winters
Chairperson
Integrity Committee
c/o Integrity-WG@cigie.gov

*Re: Response to Integrity Committee Council of the Inspectors General on Integrity and Efficiency (CIGIE)
Report of Investigation 971*

Dear Chairperson Winters:

Please accept this correspondence as our client's response to the Integrity Committee (IC) Council of the Inspectors General on Integrity and Efficiency (CIGIE) Report of Investigation (ROI) dated February 17, 2022. We ask that you find that the ROI misrepresents Mr. DePasquale's actual involvement in disclosing the identity of a whistleblower, and misconstrues the underlying events regarding his alleged failure to cooperate with the IC's investigation. Mr. DePasquale never refused to participate in the IC investigation, and in fact did provide information to the investigators on numerous occasions.

I. Background Facts

On September 4, 2018, the IC received a complaint alleging that Mr. DePasquale engaged in "substantial misconduct."¹ On October 25, 2018, Mr. DePasquale received a written "Request for Response" document from then-IC Chairperson Scott Dahl pursuant to Case 971, stating that the IC had accepted for review that Mr. DePasquale had:

- 1) Retaliated against [REDACTED] due to her disclosure of wrongdoing by the FHFA Director and IG Wertheimer when he recommended FHFA withhold a promotion until [REDACTED] cooperated with requests for information in an unrelated matter.
- 2) Committed substantial misconduct when he attempted to intimidate [REDACTED] through the issuance of subpoenas and demands for her personal property.
- 3) Engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when he provided information about [REDACTED] investigation, including her anonymous complaint, to senior agency officials and when he assisted in the investigation of [REDACTED] EEO allegations, despite his office being a named party to the complaint, and in spite of FHFA referring that complaint to an independent agency for investigation to avoid conflicts of interest.

¹ Ex. 1.

(b) (6), (b) (7)(C)

The IC further requested that Mr. DePasquale answer certain questions related to these allegations. On November 8, 2018, the undersigned attorney ((b) (6), (b) (7)(C)) submitted an entry of appearance.

On December 3, 2018, (b) (6), (b) (7)(C) provided CIGIE with Mr. DePasquale's comprehensive and detailed written response to the questions posed by the IC investigators.² Mr. DePasquale's narrative responses span twenty-two pages, with another 150 pages of relevant attachments included.³ Mr. DePasquale answered every question posed by the investigators in extensive detail and provided supporting documentation for the points he raised.

In response to the first allegation, that Mr. DePasquale retaliated against (b) (6), (b) (7)(C) due to her disclosure of wrongdoing by the FHFA Director and IG Wertheimer when he recommended FHFA withhold a promotion until (b) (6), (b) (7)(C) cooperated with requests for information in an unrelated matter, Mr. DePasquale explained that the record demonstrated that neither Mr. DePasquale, nor, to his knowledge, anyone within OIG, recommended that FHFA withhold a promotion from (b) (6), (b) (7)(C) until she cooperated with requests for information in an unrelated matter in retaliation for disclosures made by (b) (6), (b) (7)(C). With respect to the second allegation, that Mr. DePasquale "[c]ommitted substantial misconduct when [he] attempted to intimidate (b) (6), (b) (7)(C) through the issuance of subpoenas and demands for her personal property," Mr. DePasquale's counsel explained again that the evidence in this matter demonstrates that neither Mr. DePasquale, nor, to the best of his knowledge, anyone else within OIG, attempted to intimidate (b) (6), (b) (7)(C) through the issuance of subpoenas (which sought personal property that contained recordings of her conversations with Director Watt, and emails and texts with Director Watt). The IC did not accept either allegation for investigation.

With respect to the third allegation, Mr. DePasquale explained the allegation is erroneous for several reasons. Mr. DePasquale first explained that neither Mr. DePasquale nor anyone else in OIG sought to address, steer, or otherwise provide any input in the investigation of (b) (6), (b) (7)(C) EEO complaint, which was being investigated by FHFA. As OIG explained to (b) (6), (b) (7)(C) in an email on August 1, 2018, its inquiry was focused on possible misconduct by Director Watt. Further, the OIG's report dated November 29, 2018, explains that OIG has never conducted any investigation of (b) (6), (b) (7)(C) EEO allegations. At no time did Mr. DePasquale, nor, to his knowledge, anyone else in OIG, provide the Agency with information regarding (b) (6), (b) (7)(C) EEO investigation or have any role in that investigation.

Mr. DePasquale further explained why he informed FHFA (b) (6), (b) (7)(C) that FHFA's EEO office had improperly refused to take an EEO complaint from (b) (6), (b) (7)(C):

(b) (6), (b) (7)(C) filed a hotline complaint with OIG on March 19, 2018, in which she alleged that FHFA employees misused the OIG hotline process, and that FHFA had failed to uphold its Anti-Harassment Statement and Anti-Harassment Policy, Procedures, and Responsibilities – specifically that FHFA had a disproportionate number of white executives compared to African American females, the latter group

² This response is also authored by (b) (6), (b) (7)(C), with (b) (6), (b) (7)(C) again serving as Mr. DePasquale's lead counsel.

³ Ex. 14.

comprising only 5 out of the total of 43 Agency executives. (b) (6), (b) (7)(C) sought anonymity for her complaint.

Given that (b) (6), (b) (7)(C) hotline claim sounded in federal anti-discrimination laws under Title VII, OIG's (b) (6), (b) (7)(C) recommended, to (b) (6), (b) (7)(C) counsel at that time via a letter dated March 27, 2018, that (b) (6), (b) (7)(C) should contact the FHFA's EEO office. Her counsel responded by letter dated April 4, 2018, to (b) (6), (b) (7)(C) that FHFA's EEO office had told (b) (6), (b) (7)(C) that she could not pursue EEO counseling over her complaint unless she was able to specifically identify the alleged discriminators.

During a regular OIG senior staff meeting with (b) (6), (b) (7)(C) on April 9, 2018, (b) (6), (b) (7)(C) reported on the April 4, 2018, letter from (b) (6), (b) (7)(C) counsel. OIG senior staff recognized from this letter that (b) (6), (b) (7)(C) had revealed both her identity and the nature of her EEO claims to FHFA EEO staff when she sought to lodge her complaint with the FHFA EEO office.

Because: (1) (b) (6), (b) (7)(C) discrimination allegations on their face raised significant issues under federal equal opportunity law/anti-discrimination law, (2) EEO claims must be brought to the Agency within a relatively short period of time, and (3) (b) (6), (b) (7)(C) had already disclosed her identity and the nature of her EEO claims to FHFA's EEO office, it was determined that Mr. DePasquale would speak to FHFA's (b) (6), (b) (7)(C) to advise him that the FHFA needed to make sure that its EEO office addressed (b) (6), (b) (7)(C) EEO complaint fully and appropriately.

On April 11, 2018, Mr. DePasquale advised FHFA (b) (6), (b) (7)(C) that FHFA needed to make sure that its EEO office addressed (b) (6), (b) (7)(C) EEO complaint fully and appropriately. Mr. DePasquale did not disclose to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had filed a hotline complaint, or the specific allegations contained in her complaint, or the specific details contained in her counsel's letter to OIG beyond that the Agency refused to accept her claim. These facts demonstrate that Mr. DePasquale's disclosures to (b) (6), (b) (7)(C) were consistent with OIG's duties and authorities under the IG Act of 1978, as amended.

...

... OIG has not investigated (b) (6), (b) (7)(C) and did not investigate her hotline complaint, so it had no information to provide senior agency officials. OIG played no role in assisting FHFA in investigating (b) (6), (b) (7)(C) EEO complaint. The November 28, 2018, letter from FHFA (b) (6), (b) (7)(C) confirms that no OIG employee provided information to senior agency officials about (b) (6), (b) (7)(C) EEO claims against the Director.

Also explained above are the circumstances that led Mr. DePasquale to inform FHFA (b) (6), (b) (7)(C) that FHFA's EEO office improperly refused to take an EEO complaint from (b) (6), (b) (7)(C).

On May 20, 2019, the IC notified Mr. DePasquale that it had accepted for investigation part of the third allegation – “Whether you abused your authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when you disclosed [REDACTED] identity and her anonymous complaint to senior agency officials without her consent.”⁴ The IC assigned the U.S. Department of Health and Human Services (HHS) OIG to investigate.

With respect to this allegation, it does not appear that HHS OIG took any investigative steps with respect to this allegation until November 24, 2020, when it interviewed [REDACTED].⁵ [REDACTED] repeatedly testified that Mr. DePasquale did not reveal that [REDACTED] had made an anonymous complaint. Instead, [REDACTED] merely recalls Mr. DePasquale said that “essentially any EEO complaint should be addressed fully and would [sic] speak to EEO complainant’s lawyer before revealing the name of that person.” [REDACTED] further testified that he did not follow up on Mr. DePasquale’s comment. [REDACTED] further noted that the conversation took place years ago.⁶

From December 2018 to February 2021, HHS OIG did not request Mr. DePasquale to provide any further information or sit for an interview. On February 22, 2021, at 5:12 PM, Investigator [REDACTED] emailed [REDACTED], who had never communicated with anyone on behalf of Mr. DePasquale, and stated that she, “would like to speak,” with Mr. DePasquale regarding the responses he had submitted on December 3, 2018. Investigator [REDACTED] stated in her email to, “please advise of Mr. DePasquale’s availability to meet by close of business this Wednesday, February 24, 2021.” [REDACTED] did not include Mr. DePasquale or [REDACTED] on this communication. [REDACTED] concluded her email with:

I am available to speak with Mr. DePasquale anytime on Thursday or Friday of this week. I would like to meet with Mr. DePasquale on or before Friday, February 26, 2021. If we receive no response by you or Mr. DePasquale by February 24, 2021, we will consider the lack of response to be a denial of our request for assistance.

[REDACTED] was not in the office when this email arrived, and it was certainly not an expected communication after more than two full years without any follow-up from the Agency.

[REDACTED] did not respond. Inspector [REDACTED] did not call the firm, did not email or call [REDACTED] or attempt to confirm with Mr. DePasquale whether the firm still represented him in this matter, or seek to confirm receipt of its correspondence in any way. Inspector [REDACTED] – who also had never communicated with the firm prior to this date – never had any basis to believe her email was received. [REDACTED] was available to be contacted throughout this entire period and would have readily responded to any such contact.

[REDACTED] became aware of Investigator [REDACTED] email on March 30, 2021, and responded the same day, explaining that he had not been copied on the inquiry, despite being the attorney who corresponded on Mr. DePasquale’s behalf. [REDACTED] further explained:

We are, however, concerned that this investigation comes at a very late date and after Mr. DePasquale already provided a detailed a (sic) response to these matters well over

⁴ Ex. 1.

⁵ Exs. 16 and 17.

⁶ Ex. 17.

two years ago. If you could please clarify the questions you have for Mr. DePasquale in writing, we would be happy to provide written responses. We look forward to your response and assisting you in this matter.⁷

Neither we, nor Mr. DePasquale, received any follow-up to this offer of assistance until April 7, 2021, when (b) (6), (b) (7)(C) responded that, “The time to respond has lapsed significantly, and HHS OIG will not be providing any questions in writing.”

The Draft Report does not document this exchange. Instead, it merely states, “Due to the lack of cooperation from Chief Counsel DePasquale and FHFA-OIG, HHS-OIG was unable to independently corroborate the existing evidence, and therefore, could not make any findings on the underlying allegation that Chief Counsel DePasquale had abused his authority and engaged in conduct that undermines the independence and integrity reasonably expected of a covered person when on April 11, 2018, he disclosed identity and her anonymous complaint to (b) (6), (b) (7)(C) without consent.”

II. The IC’s investigation was untimely and therefore unauthorized.

Section 11(d) of the IG Act requires a determination as to referral for investigation by the IC Chair not later than 30 days after receipt⁸ and completion of the investigation not later than 150 days after referral.⁹ The Act provides only one option for obtaining an extension to this deadline: “The 30-day period described in clause (i) may be extended for an additional period of 30 days if the Integrity Committee provides written notice to the congressional committees described in paragraph (8)(A)(iii) that includes a detailed, case-specific description of why the additional time is needed to evaluate the allegation of wrongdoing.”¹⁰ Likewise, failing to complete an investigation within this 150-day period required notification and briefing to Congress “every 30 days regarding the status of the investigation and general reasons for delay until the investigation is complete.”¹¹

As FHFA OIG has explained in several communications to the IC, “If the IG Act’s deadlines have been exceeded, then the statutory authority of the IC to conduct this investigation has expired.”¹² FHFA OIG explained to HHS OIG and the IC that (1) legislative history demonstrated that Congress intended the deadlines to be jurisdictional, i.e., that they specifically imposed timeframes because Congress was “very concerned with the time taken by the IC to conduct and complete its investigations,”¹³ (2) the language regarding the timeliness requirements was clear due to the use of “shall” and that, “[w]hen Congress intended a statutory timeframe for the IC to be aspirational, it did not without express modification; instead it modified ‘shall’ with the phrase ‘to the maximum extent practicable’ and created an aspirational standard,”¹⁴ (3) Supreme Court precedent required adherence to the ordinary language of a statute and that the ordinary use of the word “shall” meant that “the IC

⁷ See Emails Between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in March/April 2021, enclosed.

⁸ 5 U.S.C. App § 11(d)(7)(C)(i).

⁹ *Id.* § 11(d)(5)(B)(i).

¹⁰ *Id.* § 11(d)(5)(B)(ii).

¹¹ *Id.* § 11(d)(7)(C)(ii).

¹² Ex. 34.

¹³ *Id.* (citing S. Rep. 114-36 (May 5, 2015) at 11.

¹⁴ *Id.* (citing *Id.* §11(d)(8)(A)).

is authorized to act only within these statutory deadlines,"¹⁵ and (4) CIGIE's Legislative Committee's advocacy for an extension of these deadlines during the legislative process¹⁶ as well as Mr. Dahl's testimony before Congress that referred to these deadlines as "statutory deadlines"¹⁷ demonstrated these deadlines were mandatory, not optional, and that no authority to investigate existed outside of such constraints. The record demonstrates that neither HHS OIG nor IC has ever even responded to these concerns, let alone addressed them.

Here, the IC's Notification of Investigation stated that it received the complaint at issue on September 4, 2018.¹⁸ The latest date the IC could have referred the matter for investigation in compliance with the statutory requirement (absent extension) was therefore October 4, 2018 (30 days from the date of receipt). Likewise, the 150-day requirement for completion of the investigation required completion by March 2019. By any calculation, absent an authorized extension, no authority exists for the referral for investigation beyond October 2018 nor continuation of an investigation beyond March 2019, let alone over two years beyond the deadline.

Further, no legitimate reason existed for the delay. Mr. DePasquale provided his detailed responses in December 2018. HHS OIG did not even interview ██████████ until nearly two years later in November 2020, nor ask Mr. DePasquale to be interviewed until three months after that. No reasonable explanation exists for such delay, and, regardless, no authority exists to conduct investigations of indefinite lengths. Opening yet another investigation based on an underlying complaint that the IC received in October 2018 would make a mockery of these statutory deadlines.

Likewise, the IC has no jurisdiction to open an investigation into a complaint that allegedly occurred in February 2021. If HHS OIG believed Mr. DePasquale was failing to cooperate, the 30-day period to refer a complaint for investigation ended by April 2021. No authority for referring a matter for investigation over a year later exists.

III. No authority exists to open an investigation and make a finding against a private citizen.

The IG Act limits the IC's investigatory authority to specific, covered individuals: IGs, individuals who report directly to IGs, and staff members designated by IGs.¹⁹ Mr. DePasquale is now retired. He does not occupy any such position. The list does not include former employees but rather clearly uses the present tense – an employee who "reports directly" or "is designated." We are unaware of CIGIE initiating an investigation into an employee who does not – at the time of the initiation of the investigation – occupy a covered position.

The IC did not expand the scope of its investigation to address a complaint that Mr. DePasquale refused to cooperate with its investigation. It did so with respect to Mr. Parker, as the

¹⁵ *Id.* (citing *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *Consumer Product Safety Commission et al. v. GTE Sylvania, Inc. et al.*, 447 U.S. 102, 109 (1980)).

¹⁶ *Id.* (citing June 11, 2015, IG Kathy Buller Letter to the Hon. Ron Johnson and the Hon. Thomas R. Carper, at 6, 1st and 2nd bullets).

¹⁷ *Id.* (citing Statement of Scott S. Dahl to the U.S. House of Representatives Committee on Oversight and Reform, Subcommittee on Government Operations (September 18, 2019) at 7 ¶ 2).

¹⁸ *Ex. 1*.

¹⁹ 5a U.S.C. § Section 11(d)(4)(B).

reports notes, “On August 31, 2020, the CICIE IC requested that HHS-OIG investigate allegations of wrongdoing against Acting Deputy IG Parker. Specifically, the IC asked HHS-OIG to investigate whether Acting Deputy IG Parker: Violated any laws or regulations in failing to cooperate in HHS-OIG’s investigation.” It did not do so here. The allegation of refusal to cooperate was never part of the scope of this investigation, and no authority exists to open such an investigation and make a finding. Moreover, the matter was clearly not investigated, as explained below, as no support of it exists in the record. We can only conclude that the consideration to make a “finding” rather than refer the matter for actual investigation recognizes that the IC cannot refer an allegation against a private citizen for investigation. Yet, without a record to support an allegation, an “investigation” would be required, and the IC cannot refer this matter for investigation.

IV. Mr. DePasquale did not refuse to cooperate with the IC’s investigation.

As an initial matter, the report contains no basis to make any such finding. It contains no facts to support its assertion that Mr. DePasquale exhibited a “lack of cooperation.” It does not state when or how Mr. DePasquale refused to participate. Not a single exhibit nor statement of fact in the entire report describes a shred of support for this allegation. To the extent the IC is relying on information outside the record – the email exchanges noted above – no basis exists to make a finding on alleged evidence outside the record. We hope you agree that the IC cannot possibly claim that a report that fails to provide a single piece of evidence or argument for an allegation could lead to a “finding” of wrongdoing.

Further, one does not commit misconduct by failing to cooperate with an unauthorized investigation. In considering whether an employee has committed the misconduct of failing to cooperate in an investigation, the Merit Systems Protection Board has explained that agencies must “consider surrounding circumstances, including the appellant’s reservations regarding the legality of the instruction.”²⁰ The Board has specifically rejected charges of failing to cooperate when an employee “raised legitimate concerns about the investigation in which he was initially asked and ultimately ordered to participate [and] did not get a definitive answer about whether the investigation was lawful.”²¹ Here, FHFA OIG and Mr. DePasquale’s counsel raised legitimate concerns regarding the timeliness of the investigation, concerns that went unanswered.

Regardless, the IC does not have to consider this issue because the allegation is erroneous for several reasons. First, Mr. DePasquale never received notice that he was required to participate. Even if he had received HHS OIG’s contact in February 2021, the contact merely asked him to participate in an interview. It did not inform him that his participation was required or that declining to participate would constitute failure to cooperate. To the contrary, it stated that it would “consider the lack of response to be a denial of our request for assistance.” If anything, the phrase “denial of a request” conveys that responding to the request was voluntary. HHS OIG did not inform him of any duty to cooperate, explain its authorization to conduct an investigation that appeared untimely, or contact FHFA OIG with respect to securing Mr. DePasquale’s testimony. Not a single official from a single entity – HHS OIG, the IC, or FHFA OIG – informed Mr. DePasquale that he had a duty to be interviewed.

²⁰ *Pedlow v. Department of Defense*, 107 M.S.P.R. 191 (2007) (citing *Brown v. Department of Justice*, 31 M.S.P.R. 211 (1986), citing *Brown v. Department of Justice*, 790 F.2d 89 (Fed. Cir. 1986) (Table)).

²¹ *Id.*

We also note that HHS OIG appears to have been required to coordinate and request any “information from individuals” through Acting Deputy IG-Investigations Richard Parker. In July 2020, HHS OIG wrote “please advise if your delegated authority to respond on behalf of the FHFA OIG is limited to documentary evidence or does it also include access to witnesses.”²² Mr. Parker responded, “Inspector General Wertheimer’s delegation of authority to me covers information from all sources, including information possessed by individuals.”²³ Mr. Parker thereafter reiterated concerns regarding whether the investigation was authorized – concerns to which neither HHS OIG nor the IC responded. HHS OIG provides no explanation as to why it would circumvent Mr. Parker to request information from a witness after confirming with Mr. Parker that any such requests should be directed to Mr. Parker.

Additionally, Mr. DePasquale did not reject the request for information. First, neither he, nor (b) (6), (b) (7)(C), ever received it. Sending a single email to someone whose participation consisted of being listed on a letter in which I signed for her and then myself – without any follow-up to me (with whom IC had been communicating) or the firm via email, call, or otherwise – or attempt to confirm with Mr. DePasquale whether our firm even continued to represent him more than two years after we submitted a document on his behalf with respect to an investigation that was required to end in 150 days can hardly be attributed to some failure on the part of Mr. DePasquale. Likewise, asserting that “The time to respond has lapsed significantly” is preposterous considering that the HHS OIG did not even request to interview Mr. DePasquale until more than two years after he provided detailed responses to this allegation. Second, Mr. DePasquale nevertheless offered to provide information, a response which HHS OIG rejected without explaining what basis existed to compel Mr. DePasquale to provide anything further.

Finally, the assertion that Mr. DePasquale prevented HHS OIG from reaching a conclusion as to its investigation is erroneous. Finding a “disclosure” occurred requires proof the recipient viewed or heard the information.²⁴ [REDACTED] testified during two interviews. [REDACTED] did not even recall Mr. DePasquale disclosing the identity of [REDACTED] at all, let alone with respect to being a whistleblower. [REDACTED] did not share Mr. DePasquale’s statements with anyone else. HHS OIG has failed to explain what information is possibly needed to further assess the matter. No further testimony is needed, no investigation is required – nothing can possibly shed any further light on what [REDACTED] heard during this conversation. Even if Mr. DePasquale had shared [REDACTED] name with [REDACTED], [REDACTED] did not hear it. Moreover, Mr. DePasquale explained in detail his intentions for sharing this limited information, none of which HHS OIG challenged or explained what was possibly missing with respect to such explanations. The matter is fully resolved.

²² Ex. 39.

²³ *Id.*

²⁴ See *Wrocklage v. Department of Homeland Security*, 769 F.3d 1363, 1369 (Fed. Cir. 2014).

Letter to Chairperson Winters

April 14, 2022

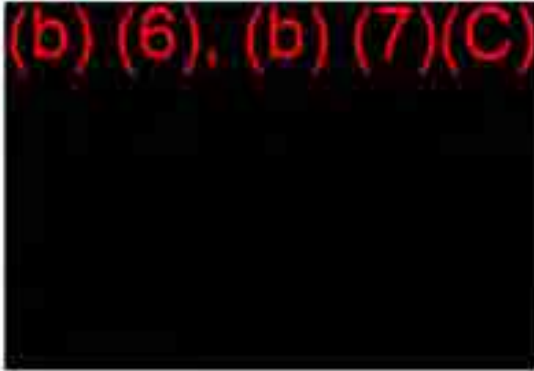
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V. Conclusion

For the foregoing reasons, we hope you will agree that no basis exists to report that Mr. DePasquale committed wrongdoing.

Sincerely,

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the signature area. The text "(b) (6), (b) (7)(C)" is printed in red at the top left of the redaction.

Enclosure

From: (b) (6), (b) (7)(C)
Sent: Wednesday, April 7, 2021 9:55 AM
To: (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: RE: U.S. Department of Health and Human Services Request for Assistance

Follow Up Flag: Follow up
Flag Status: Completed

(b) (6), (b) (7)(C)

Thank you for your response. The time to respond has lapsed significantly, and HHS.OIG will not be providing any questions in writing.

Regards,

(b) (6), (b) (7)(C)

U.S. Department of Health & Human Services
Office of Inspector General
Office of Investigations
Special Investigations Branch

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)
Sent: Tuesday, March 30, 2021 3:27 PM
To: QQ- (b) (6), (b) (7)(C)
Cc: (b) (6), (b) (7)(C)
Subject: RE: U.S. Department of Health and Human Services Request for Assistance

CAUTION: External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

(b) (6), (b) (7)(C)

We apologize for the delay in response to your request for assistance below. I had not been copied on the request and only just received it; the delay was unintentional. Please include me (and (b) (6), (b) (7)(C)) in all correspondence moving forward.

We are, however, concerned that this investigation comes at a very late date and after Mr. DePasquale already provided a detailed a response to these matters well over two years ago. If you could please clarify the questions you have for Mr. DePasquale in writing, we would be happy to provide written responses.

We look forward to your response and assisting you in this matter.

Sincerely,

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C) >

Sent: Monday, February 22, 2021 5:12 PM

To: (b) (6), (b) (7)(C)

Cc: (b) (6), (b) (7)(C) >

Subject: U.S. Department of Health and Human Services Request for Assistance

Good afternoon (b) (6), (b) (7)(C)

By way of virtual introduction, my name is (b) (6), (b) (7)(C). I work as a criminal investigator for the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), Office of Investigations (OI), Special Investigations Branch.

I am conducting an investigation on behalf of the Integrity Committee (IC) of the Council of the Inspectors General on Integrity and Efficiency (CIGIE). I would like to speak with your client, Mr. Leonard DePasquale, Chief Counsel to the Federal Housing Finance Agency, in relation to the responses Mr. DePasquale provided to the IC on December 3, 2018 via (b) (6), (b) (7)(C). Please advise of Mr. DePasquale's availability to meet by close of business this Wednesday, February 24, 2021. I am available to speak with Mr. DePasquale anytime on Thursday or Friday of this week. I would like to meet with Mr. DePasquale on or before Friday, February 26, 2021. If we receive no response by you or Mr. DePasquale by February 24, 2021, we will consider the lack of response to be a denial of our request for assistance.

This request is made for health oversight and/or law enforcement purposes and in connection with an official investigation being conducted by the HHS OIG. Any unauthorized disclosure of this request could jeopardize or impede the OIG's investigation. As such, you are instructed not to discuss with or disclose the existence of this request to anyone, including other persons within your office, department, agency, other HHS offices, departments or agencies, unless necessary to complete this request or without first obtaining permission from the requesting Special Agent.

I have copied (b) (6), (b) (7)(C) Special Investigations Branch and (b) (6), (b) (7)(C) Office of Counsel to the Inspector General. (b) (6), (b) (7)(C) is providing legal support to the Special Investigations Branch on this matter.

I appreciate your assistance concerning this request.

Kind regards,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

Inspector

HHS/OIG/OI

Special Investigations Branch

(b) (6), (b) (7)(C)