



Integrity Committee

Council of the Inspectors General on Integrity and Efficiency

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April 14, 2021

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

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 Inspector General (IG) Laura Wertheimer, Chief Counsel (CC) Leonard DePasquale, Acting Deputy IG for Investigations (DIG) Richard Parker, and Associate Inspector General (AIG) Jennifer Byrne, Federal Housing Finance Agency Office of Inspector General (FHFA OIG). The IC is referring this matter to you for appropriate action.¹

The IC is charged by statute to receive, review, and refer for investigation allegations of wrongdoing made against an IG or a designated staff member within an OIG.² To maintain public trust, Congress designated the IC, which is comprised of four IGs, a representative from the Federal Bureau of Investigation, and a representative from the Office of Government Ethics (OGE), 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.”³ 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.⁴

Pursuant to that mandate, this report sets forth the IC’s findings of wrongdoing against IG Wertheimer, CC Leonard DePasquale, and DIG Richard Parker, FHFA OIG.⁵ The IC concludes by a preponderance of the evidence that IG Wertheimer, CC DePasquale, and DIG Parker abused

¹ In the case of a report relating to an IG of an establishment or any employee of that IG, the Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), section 11(d)(8)(A)(ii), requires the IC to refer its investigative findings to the President. However, the IC notes that the IG or Acting IG, as appropriate, has the sole authority to make personnel decisions regarding subordinate OIG employees.

² IG Act, section 11(d)(1).

³ Committee on Oversight and Government Reform, *Improving Government Accountability Act*, 110th Cong. (Sept. 27, 2007) (H. Rept. 110-354).

⁴ Integrity Committee Policies and Procedures (ICP&P) (2018), section 7.A.

⁵ The IC determined the record contained sufficient evidence to support findings of wrongdoing against CC DePasquale and DIG Parker without additional investigation.

their authority in the exercise of their official duties, and that IG Wertheimer engaged in conduct that undermines the integrity reasonably expected of an IG. The IC determined there was insufficient evidence to support a finding of wrongdoing against AIG Byrne.⁶

Background

Beginning in 2017, the IC received multiple complaints alleging IG Wertheimer, AIG Byrne, and other senior FHFA OIG personnel had grossly mismanaged the FHFA OIG Office of Audits, implemented coercive personnel actions, and created a culture of retaliation and abuse.⁷ Pursuant to its procedures, the IC decided to investigate the allegations with the assistance of the Federal Deposit Insurance Corporation Office of Inspector General (IC investigators). Specifically, the IC investigators were asked to determine whether:

1. IG Wertheimer and a senior employee imposed on OIG auditors in mid-year an unachievable performance standard (i.e., a publication requirement) designed, sequenced, and intended to coerce targeted auditors to accept an ostensibly voluntary buyout or Voluntary Separation Program.
2. IG Wertheimer failed to resist or report to Congress threats by the FHFA Director to cut the OIG's budget and to reduce the OIG's staff and resources, particularly in the Office of Investigation and cited those threats within the OIG as grounds for certain of her decisions.
3. On or about November 14, 2017, IG Wertheimer violated the Privacy Act by describing details of an Equal Employment Opportunity (EEO) complaint filed by one OIG employee, whom IG Wertheimer identified, to another OIG employee who had no need for the information in order to fulfill his or her official duties.
4. Since becoming aware of allegations made against her to the IC and to Congress, IG Wertheimer has sought to identify the complainant(s), discuss with one or more of them the merits of allegations and promote her version of relevant events, and disparaged and demeaned staff members whom she believes complained or cooperated with inquiries into the allegations.

⁶ While there is evidence that AIG Byrne copied IG Wertheimer's actions by referring to an employee as a "weasel," a nickname bestowed upon the employee by IG Wertheimer, the IC does not find this limited use amounts to an abuse of her authority.

⁷ In April 2017, the IC received a complaint from the Chairmen of the Senate Committees on the Judiciary and Homeland Security and Governmental Affairs. Along with the Office of Special Counsel (OSC) and the U.S. Department of Justice, the IC determined that certain allegations in the Congressional letter should be referred to OSC for investigation as they were within OSC's jurisdiction and overlapped with OSC's then-pending investigation. The IC received OSC's findings and two anonymous complaints in the fall of 2017, the substance of which can be found in the exhibits attached to the enclosed *Report to the Integrity Committee*. Enclosure (Encl.) 2. The IC requested IG Wertheimer and AIG Byrne respond to the allegations and, after receiving and reviewing those responses, determined to refer the matter to the IC Chairperson for investigation.

5. AIG Byrne threatened to retaliate against OIG employees who complained to Senator Grassley's office by stating that she would make criminal complaints about those individuals to the U.S. Department of Justice.⁸

As detailed below, the facts developed by the IC investigators substantiated the fourth allegation and raised significant concerns regarding the first. In addition, IG Wertheimer and her staff refused to turn over certain documents to IC investigators and refused to make a key relevant witness, CC DePasquale, available for interview.⁹ They did this despite repeated IC reminders and requests to cooperate, and the intervention of the CIGIE Chairperson.¹⁰ This unprecedented impediment prevented IC investigators from having access to a complete record of the facts, as detailed below and in the enclosed Report to the Integrity Committee.¹¹ Notwithstanding these impediments, the IC determined there was sufficient evidence to make preliminary findings of wrongdoing and, in accordance with section 11(d) of the IG Act, provided IG Wertheimer, AIG Byrne, DIG Parker, and CC DePasquale the opportunity to respond to the draft report, which was redacted to protect witness and complainant confidentiality.¹² Their responses are enclosed.¹³

Findings and Conclusions

After thoroughly reviewing the evidence and responses, the IC finds by a preponderance of the evidence that IG Wertheimer abused her authority in the exercise of her official duties and engaged in conduct that undermines the integrity reasonably expected of an IG. In particular, the IC finds 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

⁸ Encl. 2, Appendix (App.) D (Correspondence), Exhibit (Ex.) 23 (IC Request for Investigation). IC investigators were also asked to determine the extent FHFA OIG funds were used to pay for outside counsel for IG Wertheimer and under what authority they were made, who determined that the services were necessary, permissible, and a prudent use of public funds, who approved the expenditures, and whether any of the expenditures were for representation of the FHFA OIG or officials of the FHFA OIG other than IG Wertheimer. *Id.* The IC investigators did not find evidence that the FHFA OIG paid for outside counsel for IG Wertheimer, or any other official of the FHFA OIG. Encl. 2 at 52.

⁹ As detailed in Part II, FHFA OIG provided a variety of legal objections and reasons for withholding documents, including, but not limited to: draft reports; draft correspondence to Congress; documents reflecting FHFA OIG's deliberative process; confidential, privileged documents; attorney work-product; attorney-client communications; privileged communications between counsel; and confidential attorney notes.

¹⁰ If the IC determines that a Respondent has interfered with or otherwise prejudiced an investigation, as happened in this matter, the IC may notify the Respondent's appointing authority, the CIGIE Executive Chairperson, and the CIGIE Chairperson and may offer recommendations for corrective and disciplinary action. ICP&P, section 9.D.

¹¹ Encl. 2. In our review of IC records, spanning 30 years and 40 investigations, this is the first time an IG and staff refused to allow IC investigators full access to documents and witnesses.

¹² Encls. 1-2.

¹³ Encls. 3-5. AIG Byrne did not provide a response for the IC's consideration.

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 finds by a preponderance of the evidence 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.

I. Culture of Witness Intimidation

The IC finds IG Wertheimer abused her authority by creating and fostering a culture of abuse and intimidation for her staff, which particularly focused on those who were, or whom she perceived to be, providing information to Congress and/or the IC.¹⁴

Government employees who report information to oversight bodies play an important role in helping agencies recognize and address 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, as amended and expanded by the Whistleblower Protection Enhancement Act of 2012, to establish clear rules for ensuring witnesses can come forward without fear of reprisal, and IGs are legally required to protect the confidentiality of such disclosures.¹⁵

Given the importance of such lawful disclosures for effective oversight, IGs in particular should be encouraging their employees to come forward with such concerns, not intimidating or demeaning them for doing so. In this instance, the evidence establishes that far from encouraging her employees from reporting suspected wrongdoing, IG Wertheimer abused her authority by ridiculing, belittling, and bullying her staff, including some who were communicating with Congress. Furthermore, IG Wertheimer's so-called "inner circle" of leadership followed her example through similar patterns of intimidation and demeaning remarks.¹⁶

¹⁴ "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. ICP&P, Appendix A.

¹⁵ IG Act, section 7(b) (stating an IG may not disclose a whistleblower's identity without their consent unless the IG determines such disclosure is unavoidable during the course of the investigation). *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.'").

¹⁶ Encl. 2, App. C, Ex. 2A (Witness transcript) at 73 (describing their time in the inner circle as an abusive relationship); App. C, Ex. 10 (Witness transcript) at 52 (thinks IG Wertheimer moved an employee from his position

From October 8, 2015, to April 4, 2017, the Chairmen of the Senate Committees on the Judiciary and Homeland Security and Governmental Affairs received multiple complaints about FHFA OIG and requested from IG Wertheimer information relating to reductions in FHFA OIG personnel, the decline in the level of work produced under IG Wertheimer's leadership (including the alleged cancelation of near-completed audits), and the hiring of candidates who lacked advertised position qualifications.¹⁷ The Chairmen also requested IG Wertheimer make five FHFA OIG employees available for interviews with Congressional staff.¹⁸

Witnesses stated IG Wertheimer spoke disparagingly about FHFA OIG employees who agreed to cooperate with Congress. One witness told IC investigators there were multiple meetings in which IG Wertheimer and AIG Byrne discussed those employees, "guessing what they might've said" and "mocking anyone who talked to anyone about anything."¹⁹ A second witness stated IG Wertheimer "didn't speak well" of the individuals who agreed to testify on the Hill and she was "not happy" they went.²⁰ Another witness told the IC that IG Wertheimer and AIG Byrne talked about what employees may have told Congressional staff, noting "[a]lmost every employee who spoke with Sen. Grassley's office now reports to [CC] Len DePasquale ... [t]his was done to punish them and protect the IG and Byrne."²¹

IG Wertheimer gave demeaning nicknames to two employees who were interviewed by Congressional staff (referred to hereafter as Senior Employee 1 (SE1) and Senior Employee 2 (SE2)), although statements differed on whether the nicknames were directly tied to their cooperation with Congress. Witnesses stated IG Wertheimer referred to SE1 and SE2 as "Boris

because "she did not trust him to be in her inner circle"); and App. C, Ex. 20 (Witness transcript) at 78 (describing the inner circle as people they trust).

¹⁷ Encl. 2 App. D (Correspondence), Ex. 1 (Letter from Sen. Grassley to IG Wertheimer) and Ex. 3 (Letter from Sen. Johnson to IG Wertheimer).

¹⁸ Encl. 2, App. D (Correspondence), Ex. 2 (Follow-up letter from Sen. Grassley to IG Wertheimer). In responding to the Congressional inquiry, FHFA OIG hired outside counsel, which had a chilling effect according to some FHFA OIG employees. App. C, Ex. 13 (Witness transcript) at 57 (stating outside counsel was brought in "to explain to us why we didn't want to cooperate with [the] Senate" and "the ramifications that can happen to you if you do..."); App. C, Ex. 21 (Witness transcript) at 9 (stating there was "kind of a lot of pressure in the office not to cooperate" and that outside counsel discussed reasons why they should "kind of be scared" of participating). Congressional staff echoed these concerns in an email to FHFA OIG outside counsel, stating, "[i]t appears to us that FHFA-OIG is using the threat of purported employee disclosure of 'privileged' information to discourage employees from meeting with the Committees and providing full cooperation." App. D (Correspondence), Ex. 8 at 2.

¹⁹ Encl. 2, App. C, Ex. 2A (Witness transcript) at 38-39.

²⁰ Encl. 2, App. C, Ex. 8A (Witness transcript) at 21, 25.

²¹ Encl. 2, App. D (Correspondence), Ex. 14 (Complaint to the IC) at 2.

and Natasha,” the spy villains in the cartoon series, *Rocky and Bullwinkle*.²² One witness believed it was because IG Wertheimer questioned their loyalty.²³ AIG Byrne claimed it was because of their purported physical resemblance to the cartoon characters and the fact that they carpooled together; nevertheless, AIG Byrne conceded that IG Wertheimer did not use the nicknames in a positive way.²⁴

As discussed in Part IV, the IC found it significant that in her interview, IG Wertheimer originally denied calling SE1 and SE2 “Boris and Natasha,” telling IC investigators she had heard it from someone else, although she could not recall whom.²⁵ However, upon further questioning, IG Wertheimer admitted that she “may” have used the nicknames and then that she was “sure” she had done so, but said it was because she believed SE1 was trying “to find ways to blow up the organization,” not because of SE1 and SE2’s cooperation with Congress.²⁶

IG Wertheimer also referred to SE1 as a “weasel” in front of her staff,²⁷ and took the extraordinary further step of purchasing and distributing a children’s book titled *Weasels* to multiple senior FHFA OIG employees, including the [REDACTED], the OIG Chief Counsel, and [REDACTED].²⁸ IG Wertheimer admitted

²² Encl. 2, App. C, Ex. 2A (Witness transcript) at 49-50 (IG Wertheimer nicknamed SE1 and SE2 Boris and Natasha and she and AIG Byrne referred to them by those names multiple times); App. C, Ex. 3 (Byrne transcript) at 80 (IG Wertheimer referred to SE1 and SE2 as Boris and Natasha); and App. C, Ex. 10 (Witness transcript) at 53 (heard IG Wertheimer call SE1 and SE2 Boris and Natasha).

²³ Encl. 2, App. C, Ex. 10 (Witness transcript) at 52-54 (“They had been part of the office under the previous IG and whether it was just a situation of they had been part of the old administration and so she was a little bit skeptical of their loyalty.”).

²⁴ Encl. 2, App. C, Ex. 3 (Byrne transcript) at 83.

²⁵ Encl. 2, App. C, Ex. 19 (Wertheimer transcript) at 98.

²⁶ *Id.* at 99. IG Wertheimer told IC investigators, “[i]f you remember that cartoon, there’s always like a bomb with a long fuse and it says TNT. And every time you turned around, there was another scheme going by [SE1] to try to undermine something.” *Id.*

²⁷ Encl. 2, App. C, Ex. 21A (Witness transcript) at 25 (“You know she nicknamed [SE1] “The Weasel”. And she would even make a, you know, kind of the way she would say would be like “The Weasel” (using higher pitch). She purchased a book on weasels...which I have here today...uh, she gave it to me and I believe she’s given it to other staff members. To sorta, you know laugh about him, say he’s the weasel.”); App. C, Ex. 8A (Witness transcript) at 22 (states IG Wertheimer gave her a book on weasels because “...her son gave it to her, several copies and she thought it was funny.”); and App. C, Ex. 3 (Byrne Transcript) at 74-75 (“Um, she brought it in one day...for some reason this weasel thing just cracks her up. And this children’s book cracked her up, so she brought it in.”). *See also* App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) at 3 (“I understand from Mr. DePasquale that he recalls having a private discussion with the IG that sometime during the second half of 2015, which involved the IG describing an FHFA-OIG employee [SE1] as a weasel.”).

²⁸ The tagline for *Weasels* states, “Weasels. What do you think they do all day? Plot world domination -- that’s what!” https://books.google.com/books/about/Weasels.html?id=wFCnCgAAQBAJ&source=kp_book_description. Encl. 2, App. C, Ex. 1B (Witness transcript) at 3-4 (claiming IG Wertheimer gave her a copy of the *Weasels* book

she used the nickname but claimed it was because SE1 “engaged in a series of actions that were duplicitous...treacherous” and, in her view, “sought to undermine the franchise of the office.”²⁹ IG Wertheimer told investigators she purchased several copies of the book to give to staff members as a way to “lighten the mood” when they came to her office to complain about SE1.³⁰ She also claimed she purchased the books prior to receiving the first Congressional letter in October 2015; however, at least one witness believed IG Wertheimer gave them the book after SE1’s Congressional interview.³¹

IG Wertheimer’s references to SE1 as a “weasel” were known within the office, and members of her leadership team followed her lead.³² For example, AIG Byrne called SE1 a “weasel” in an

after she learned one of the witness’s chickens had been killed by a weasel); App. C, Ex. 3 (Byrne transcript) at 75-77 (IG Wertheimer gave her a copy of the *Weasels* book in reference to SE1); App. C, Ex. 8A (Witness transcript) at 21 (IG Wertheimer handed out *Weasels* books to certain people who were assisting with the Congressional inquiry); App. C, Ex. 17B (Witness transcript) at 4, 9-10 (IG Wertheimer gave him a copy of the *Weasels* book and told him after the IG was interviewed by IC investigators that it was about SE1); App. C, Ex. 18 (Witness transcript) at 22-23 (IG Wertheimer gave her a copy of the *Weasels* book); and App. C, Ex. 21A (Witness transcript) at 25 (IG Wertheimer gave him and other staff members a copy of the *Weasels* book to “laugh about [SE1], say he’s the weasel.”). IG Wertheimer stated she also gave a copy of the book to CC DePasquale but, as noted above, FHFA OIG refused to make CC DePasquale available for an interview. Additionally, despite telling IC investigators that she was present when IG Wertheimer had referred to SE1 as a “weasel,” the [REDACTED] nevertheless claimed that she had never heard IG Wertheimer make disparaging remarks about employees and that she didn’t know the *Weasels* book was about SE1 because she would have told IG Wertheimer it was inappropriate. App. C, Ex. 18 (Witness transcript) at 22-24, 29.

²⁹ Encl. 2, App. C, Ex. 19 (Wertheimer transcript) at 81-82, 94-95.

³⁰ *Id.* at 91-96.

³¹ Encl. 2, App. C, Ex. 8A (Witness transcript) at 31 (thinks she received the *Weasels* book after SE1 had gone to Congress). *See also* App. C, Ex. 13 (Witness transcript) at 59 (“he said he was handed one of these coloring books. I don’t know what the occasion was but it was close in time to this, or after the Senate issue and she gave a coloring book to a bunch of people about a weasel.”). Based on witness interviews, it appears that IG Wertheimer distributed at least six, and possibly seven, copies to FHFA OIG personnel. IG Wertheimer’s personal counsel told investigators that IG Wertheimer bought five copies of the book and provided a receipt for the five books with a purchase date of August 6, 2015. App. D (Correspondence), Ex. 43 (Email from IG Wertheimer’s personal counsel to IC investigators). Counsel also represented that the books purchased on August 6, 2015, were “the only purchase made by Ms. Wertheimer (or on her behalf) that related to the FHFA-OIG.” *Id.*

³² Encl. 2, App. C, Ex. 2A (Witness transcript) at 50-51 (heard from other people that IG Wertheimer called SE1 a weasel but didn’t hear it firsthand); App. C, Ex. 7 (Witness transcript) at 24 (heard about IG Wertheimer handing out a book about weasels and assumed it was because the IG “felt that everyone was coming after her and so she just felt everyone was, everyone was going to the Hill and talking to Congress. Or making these complaints.”); and App. C, Ex. 20 (Witness transcript) at 45 (stating they heard from colleagues that IG Wertheimer had referred to SE1 as a “weasel,” though they had not heard it firsthand). *See also* App. C, Ex. 19 (Wertheimer transcript) (IG Wertheimer describing a conversation between her, AIG Byrne, and another senior employee in which she called SE1 a weasel and they all laughed).

email to another senior FHFA OIG employee.³³ In an email to IG Wertheimer, AIG Byrne called SE1 a “weasel” stating, “cue drawing of weasel standing on hind legs looking around” in reference to SE1 expressing interest in a matter.³⁴ SE1 was also aware that IG Wertheimer referred to him as a “weasel,” telling IC investigators he had heard through the grapevine that IG Wertheimer had given a bunch of people a coloring book about weasels and “apparently I’m the weasel.”³⁵

This conduct was consistent with other mistreatment of OIG employees by IG Wertheimer, who openly belittled her employees, both for physical appearances and the quality of their work.³⁶ For example, one witness told IC investigators that IG Wertheimer mocked his weight in front of a roomful of people and that it was “the most degrading and embarrassing thing.”³⁷ The witness further stated, “[a]s a mature adult I should’ve been able to stop right there and say, ‘Boss or not. Time out. That’s unprofessional and you don’t get to talk to me that way.’ But I was afraid of her. I mean I still am afraid. She’s the big boss.”³⁸ Additionally, in discussions with members of her staff, witnesses state IG Wertheimer mocked DIG Parker for crying in her office.³⁹

³³ Encl. 2, App. D (Documents), Ex. 9 (Email from AIG Byrne to senior employee, August 16, 2015) at 2 (“I hate to say it but I cringe at the thought of discussing this at sr staff with the weasel there.”).

³⁴ Encl. 2, App. D (Documents), Ex. 10 (Email from AIG Byrne to IG Wertheimer, August 17, 2015) at 1.

³⁵ Encl. 2, App. C, Ex. 13 (Witness transcript) at 59.

³⁶ *Id.* at 60-62 (IG Wertheimer mocked an employee’s weight and health); App. C, Ex. 21A (Witness transcript) at 26 (IG Wertheimer nicknamed an employee “Baby Huey,” a reference to a large and naïve cartoon duckling, because of his weight and because she felt he was a “bad attorney”); App. C, Ex. 2A (Witness transcript) at 52 (IG Wertheimer and AIG Byrne called an employee fat); and App. C, Ex. 14 (Witness transcript) at 17 (IG Wertheimer made fun of an employee for the way he dressed). AIG Byrne and eight other senior OIG employees denied hearing IG Wertheimer make comments about staff members’ physical appearances. App. C, Ex. 3 (Byrne transcript) at 73. *See also* App. C, Ex. 1A (Witness transcript) at 31; App. C, Ex. 4 (Witness transcript) at 24; App. C, Ex. 5 (Witness transcript) at 49; App. C, Ex. 6 (Witness transcript) at 9; App. C, Ex. 11 (Parker transcript) at 13-15; App. C, Ex. 12 (Witness transcript) at 7; App. C, Ex. 17A (Witness transcript) at 31; and App. C, Ex. 18 (Witness transcript) at 29.

³⁷ Encl. 2, App. C, Ex. 14 (Witness transcript) at 40.

³⁸ *Id.* at 41. The witness also stated, “For the last three years, two and a half, three years, she’s been amazing to work for. So I don’t know what. I don’t know if it was what happened with the Senate. I don’t know what turned her around... It’s almost like a different person...” *Id.* at 17-18.

³⁹ Encl. 2, App. C, Ex. 20 (Witness transcript) at 48-49 (“And so Laura came in and she was sort of laughing and crowing about the fact how she had broken Rich. He had just been in her office and she had made him cry and sort of how proud she was of the fact that she had finally broken him.”); App. C, Ex. 2A (Witness transcript) at 52-53 (“[IG Wertheimer and AIG Byrne] made fun of him all the time because he cried...I mean all the time. Like he’s a baby”). When asked by IC investigators if she had ever made comments about DIG Parker becoming emotional, IG Wertheimer said, “There’s some claim floating around that I boasted that I made people cry, or a person cry. Rich Parker, I’d been in the office less than two weeks. [An employee] wrote me a long email about Rich Parker and the problems we were having with Rich Parker... I um asked to speak to Rich because thought it was only fair to ask him what his perception was, and he broke down in tears. Okay, fine. I’ve had plenty of tears in my life, I have tissues in my office, he dried his eyes. I was leaving for the day and [an employee] said to me, ‘You look bad,

Multiple witnesses reported that IG Wertheimer's disparaging comments had a chilling effect on the willingness of her employees to cooperate with the IC's investigation.⁴⁰ One witness described the atmosphere at FHFA OIG as "an overall feeling of fear and anxiety by all employees."⁴¹ Another described it as an "us v. them" mentality.⁴² Several witnesses voiced concerns about sharing information or cooperating with IC investigators for fear of retaliation or other repercussions.⁴³ One witness explained it was "like you're on our team or you're not. And if you're not, you should know that you definitely might be retaliated against."⁴⁴ Another became concerned about participating in an interview with IC investigators after learning the nature of the allegations.⁴⁵ A third witness stated FHFA OIG employees would be reluctant to talk because the leadership "is so retaliatory" and employees are "kind of scared to death of these people."⁴⁶ A fourth witness originally did not want to disclose their identity to the IC stating, "I fear what they will do to me" and that "there is retaliation against those who have complained."⁴⁷

what's wrong?' And I said something like, 'This place is really, it's a little wacky. I mean I've got someone who's accused of running a military, running his department like an army and then he's teary in my office. I don't know what's going on.' Um, if that's boasting, that's what happened." App. C, Ex. 19 (Wertheimer transcript) at 117-118.

⁴⁰ Encl. 2, App. C, Ex. 7 (Witness transcript) at 29 ("I'll just let you know that [employee] will be afraid to speak...she just feels that they would come after her..."); App. C, Ex. 2A (Witness transcript) at 64, 72 ("And I think that anyone who is trying to self-preserve right now, that's exactly what they're doing. And if anyone who's gonna talk to you honestly and not everyone might, because they're, people across the board are kind of scared to death of these people...I know people are scared to talk to you...I mean their goal is to make sure everyone is scared to death of them and no one will talk. Once you talk, you're branded and they'll come after you, depending on how much of a threat they think you really are to them."); and App. C, Ex. 8A (Witness transcript) at 51-52 ("I imagine that there are very few people who are no longer in the office who have secured other employment, who don't feel that same sense of concern over saying anything...But I think that the people who are in it now, especially those who feel on the 'outs' or in jeopardy in some way or not in favor, then I think those people are scared.").

⁴¹ Encl. 2, App. D (Correspondence), Ex. 14 (Complaint to the IC) at 2.

⁴² Encl. 2, App. C, Ex. 5 (Witness transcript) at 46.

⁴³ Encl. 2, App. C, Ex. 5 (Witness transcript) at 59 ("I have to say that I was reluctant to do this...conditions aren't great there and people are concerned..."); App. C, Ex. 21A (Witness transcript) at 44 ("one of the things that I fear is the statement that Ms. Wertheimer...because I'm here and she finds out that I'm here that she's gonna come back um, you know, to sue me or something like that"); and App. C, Ex. 20 (Witness transcript) at 38 ("one of the worst career moves that you can do is challenging [the IG], calling her out [because] that is how you find yourself out of a job.").

⁴⁴ Encl. 2, App. C, Ex. 2A (Witness transcript) at 39.

⁴⁵ Encl. 2, App. C, Ex. 5 (Witness transcript) at 59.

⁴⁶ Encl. 2, App. C, Ex. 2A (Witness transcript) at 30, 64.

⁴⁷ Encl. 2, App. D (Correspondence), Ex. 13 (Complaint to the IC).

Another witness was apprehensive about participating in the IC's investigation because of comments by CC DePasquale, which made the witness believe there could be repercussions for things they said in their interview.⁴⁸ For example, at a staff meeting a few days before the witness's interview, CC DePasquale stated no one would "trust" an attorney who testified on the topics in the IC's investigation. CC DePasquale's statement caused the witness to be concerned that a complaint would be filed against them, or they would be retaliated against or not trusted within the office if they cooperated with the investigation.⁴⁹ Another witness told IC investigators that CC DePasquale sent an email to FHFA OIG staff instructing them to cooperate with the IC's investigation, but then approached staff members individually to tell them that the attorney-client privilege still applied and would limit what they could share with investigators.⁵⁰ The witness summed up their understanding of CC DePasquale's position as "you can go talk. And you're unfettered in anything you have to say. But understand, you know we may hold you responsible for it."⁵¹ While the IC did not find evidence of actual retaliation, these witnesses understood the comments to be a thinly veiled threat.

⁴⁸ Encl. 2, App. C, Ex. 8A (Witness transcript) at 34-35 ("I did feel intimidated because I was told when [CC DePasquale] first came in with the topics that you wanted to talk about, I wasn't actually given the document. It was just sort of put in front of me and he went through it and he said, 'Well, you don't know anything about this, right?' And 'You don't know anything about this, right?' And he went through the list and you know, you know it was sort of off-guard...").

⁴⁹ *Id.* at 33-37. *See also* App. C, Ex. 7 (Witness transcript) at 19 ("...we felt that the, the way that leadership was reading the [OSC] request, we thought it would be read narrowly and we thought everything should have been turned over. And that [CC DePasquale] was asserting attorney client privilege on everything.").

⁵⁰ Encl. 2, App. C, Ex. 13 (Witness transcript) at 57-58 ("Uh, it's the same sort of behavior. I mean, when the Senate, when the Senate, you know, uh, uh, uh, you know, asked to interview people... they brought attorneys in to sit down and tell us...to explain to us why we didn't want to cooperate with Senate...The same thing had happened here. You know, in this one. The same thing that happened is, is, is you know, [CC DePasquale] puts out...puts out an email and says the same sort of thing that you cooperate with [IC investigators]...then somebody says to him, 'So the attorney-client privilege is the same.' And he said, 'Whoa. No, no, no it's not. No that's not what I meant at all! Hell no! It still applies. I don't know what you're talking about!' And so it's, so a month later, you know, I'm sitting here, but it's the same thing. It's the exact same routine every time. It's that, 'Yeah, you can go talk. And you're unfettered in anything you have to say. But understand, you know we may hold you responsible for it.'"). The IC believes FHFA OIG improperly weaponized the attorney-client privilege by using it as a basis to withhold information in an IC investigation, as discussed in Part II below.

⁵¹ Encl. 2, App. C, Ex. 13 (Witness transcript) at 57-58. *See also* App. C, Ex. 2A (Witness transcript) at 71-72 ("Because that's sort of how they operate. But Laura is more likely, cannot, like they'll target employees there like, I think they more, they want you to be scared. Right? Like there's a veiled threat that's always out in the open. So in this case, in your investigation, I know people are scared to talk to you. Because the word has been put out that if you're a lawyer particularly and you breach the confidentiality, that they'll have you disbarred. I mean their goal is to make sure everyone is scared to death of them and no one will talk. Once you talk, you're branded and they'll come after you, depending on how much of a threat they think you really are to them."). In his comments to the draft report, CC DePasquale disputed the IC's characterization of his statements, stating he was reminding his staff to be vigilant about protecting client confidences after a leak of unsubstantiated allegations to the press, not attempting to chill witness cooperation. Encl. 5 at 12, fn. 28. However, the IC finds this argument lacks credibility, given the continuous efforts of CC DePasquale to withhold relevant information from the IC.

In her comments to the draft report, IG Wertheimer disputes this finding, stating it “rests on a handful of complaints and some stray comments reported by several anonymous individuals, out of an Agency of roughly 130 employees.”⁵² She further argues that limited use of nicknames within a small group of upper-management employees does not establish the existence of a general atmosphere of abuse and she is unaware of any current or former FHFA OIG employees who declined to speak to IC investigators because of fear or intimidation.⁵³ Additionally, IG Wertheimer, through counsel, asserts the IC investigators found no evidence that the recipients of the weasel book connected it or the nickname with SE1’s Senate committee interview, despite investigators scrutinizing the issue with “the zeal of junior zoologists.”⁵⁴

The IC finds IG Wertheimer’s arguments to be unpersuasive and inconsistent with the facts developed in the investigation. Referring to employees as spies and weasels, and mocking and handing out derisive books to humiliate, demean, or embarrass colleagues is inappropriate on its face and is exacerbated by IG Wertheimer’s employment of these techniques against actual or potential witnesses or whistleblowers – the very people IGs are supposed to protect. Such behavior suggests a hostility to oversight and is widely known to be unacceptable in the IG community and beneath the standard of integrity expected of an IG.

II. Impeding the Investigation, Withholding Evidence, and Inappropriate Personal Involvement in the IC’s Investigation

The IC finds 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.⁵⁵ Beginning in 2018, IC investigators and the IC encountered a host of access roadblocks. For example,

- IG Wertheimer wrongfully claimed and refused to waive her so-called “right to confidentiality.”⁵⁶
- CC DePasquale and the FHFA OIG Office of Counsel advised the IC and the IC investigators that FHFA OIG would not produce documents that they deemed

⁵² Encl. 3 at 26.

⁵³ *Id.* at 32-33, 36.

⁵⁴ *Id.*

⁵⁵ As noted above, “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. ICP&P, Appendix A.

⁵⁶ Encl. 2, App. D (Correspondence), Ex. 42 (Email from FHFA OIG counsel to IC investigators) at 1 (“Based on the advice of career attorneys in FHFA-OIG’s Office of Counsel (OC), IG Wertheimer will not waive confidentiality.”).

(wrongfully) to be privileged and/or non-responsive, citing the IG's refusal.⁵⁷

- CC DePasquale and the FHFA OIG Office of Counsel refused to provide a list detailing the type of documents withheld, the volume of documents withheld, and the basis for withholding.⁵⁸
- FHFA OIG Office of Counsel restricted access to 512 pages of documents that IC investigators were only allowed to review *in camera*.⁵⁹
- CC DePasquale refused, and DIG Parker declined to permit CC DePasquale to be interviewed by IC investigators.⁶⁰

These actions placed significant aspects of the conduct of IG Wertheimer and her senior leadership beyond the oversight intended by the IG Act. Moreover, her conduct and that of the senior FHFA OIG employees who followed her lead substantially delayed the IC's investigation in this matter and prevented it from reaching conclusions on some of the allegations against her as detailed in Part III below.

By design, IGs have substantial autonomy in how they carry out their oversight mission. To guarantee that they, too, are accountable for their conduct, Congress created the IC to ensure that 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.”⁶¹ Such a mechanism is necessary because an OIG's subordinate

⁵⁷ Encl. 2, App. D (Correspondence), Ex. 26 (Email from FHFA OIG counsel to IC investigators) (“we are not interpreting your document request to include information that is privileged.”); Ex. 42 (Email from FHFA OIG counsel to IC investigators) (“Based on the advice of career attorneys in FHFA-OIG's Office of Counsel (OC), IG Wertheimer will not waive confidentiality.”); Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 1-2 (“IG Wertheimer declined to waive confidentiality based on advice received from four career attorneys in FHFA-OIG's Office of Counsel (OC). Accordingly, Mr. DePasquale declined to be interviewed.”); Ex. 54 (Letter from DIG Parker to IC Chairperson) at 8 (“At bottom, nothing in the text of section 3(g) evinces a Congressional intent to authorize the IC to abrogate, or insert itself into the relationship between an IG and his or her counsel simply because an investigation is underway.”); and Ex. 66 (Letter from FHFA OIG counsel to IC investigators) at 2, FN 4 (“In the absence of a client's authorization to release these documents, we believe that they must be withheld, per section 3(g) of the IG Act, as amended, and Rule 1.6 of the D.C. Rules of Professional Conduct.”).

⁵⁸ Encl. 2, App. D (Correspondence), Ex. 53 (Email from FHFA OIG counsel to IC investigators).

⁵⁹ As IC OIG investigators were not permitted to take notes during the *in camera* review, this page count cannot be confirmed. Encl. 2, App. D (Correspondence), Ex. 63 (Email from FHFA OIG counsel to IC investigators) (“The documents at issue will be available in FHFA-OIG's offices for your *in camera* review next Thursday, May 24th at 10 AM. In order to prevent unauthorized release of information contained in these documents, we ask that you not make copies, take photos, or take notes regarding document contents.”).

⁶⁰ Encl. 2, App. D (Correspondence), Ex. 42 (Email from FHFA OIG counsel to IC investigators) and Ex. 54 (Letter from DIG Parker to IC Chairperson).

⁶¹ H. Rept. 110-354, *supra*.

employees inherently lack the structural independence needed to credibly investigate their own senior leaders.

The IG Act places IC investigations under the supervision of the IC Chairperson, who is required to conduct a “thorough and timely investigation,” in accordance with CIGIE’s Quality Standards for Investigations (QSI).⁶² 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.⁶³

Unfettered access to information as deemed necessary and relevant by an investigating IG is a fundamental requirement for IGs to conduct effective, credible oversight of federal departments, agencies, and designated federal entities. This core principle was confirmed by Congress in the IG Empowerment Act of 2016, which amended Section 6(a) of the Inspector General Act of 1978 to explicitly provide that each IG is “authorized to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that [IG] has responsibilities under this Act.”⁶⁴ Consistent with the law, it is well established that an agency cannot use the attorney-client privilege or any similar restriction as a basis to withhold documents or testimony from its IG. The same is true when an OIG’s senior personnel are investigated by the IC.

A. The evidence withheld from the IC’s investigators

As IG Wertheimer acknowledged in her testimony before Congress, “access is at the core of how the IG can fulfill its mission. If there is not unfettered access to the materials, the output will not be worth anything.”⁶⁵ However in this matter, IG Wertheimer, DIG Parker, and CC DePasquale wrongfully denied IC investigators access to relevant information and a material witness, which frustrated and impeded the IC’s investigation. To be clear, the IC requested, and was denied,

⁶² IG Act, section 11(d)(6)(A), 11(d)(7)(A).

⁶³ *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).

⁶⁴ IG Act, section 6(a)(1)(A). *See also* S. Rpt.95-1071 (1978) at 33-34 (IG can access all relevant documents available to the agency he oversees, including deliberative or other materials exempt from disclosure to the public); and CIGIE Letter to the Chairmen of the Committees on Oversight and Government Reform and Homeland Security and Governmental Affairs (August 3, 2015), on which IG Wertheimer was a signatory (noting anything less than full, unfettered access is a “serious challenge to the authority of every Inspector General and our collective ability to conduct our work thoroughly, independently, and in a timely manner”).

⁶⁵ Committee on Banking, Housing, and Urban Affairs, *Nomination of Laura S. Wertheimer*, 113th Cong. (June 17, 2014) (S. Hrg. 113-470 at 18).

access to only government information; the IC never sought communications between the subjects and their personal counsel.

Far from cooperating with the IC's investigation, FHFA OIG took a litigious posture and asserted a variety of justifications for withholding categories of documents, including draft reports; drafts of FHFA OIG's correspondence to Congress; analytical documents reflecting FHFA OIG's deliberative process; documents FHFA OIG decided were confidential or privileged; attorney work-product; attorney-client communications; privileged communications between counsel; and confidential attorney notes.⁶⁶ Indeed, in her interview with IC investigators, IG Wertheimer declined to answer questions regarding her conversations with government employees in the FHFA OIG Office of Counsel, citing agency attorney-client privilege, and referred to documents that her office later refused to produce.⁶⁷

⁶⁶ Encl. 2, App. D (Correspondence), Ex. 26 (email from CC DePasquale to IC investigators) (“...we are not interpreting your document request to include information that is privileged.”); Ex. 42 (Email from FHFA OIG counsel to IC investigators) at 1 (“...please accept this email as confirmation that Len is not available for an interview... Based on the advice of career attorneys in FHFA-OIG's Office of Counsel (OC), IG Wertheimer will not waive confidentiality.”); Ex. 49 (Email from FHFA OIG counsel to IC investigators) (“We have withheld only 4 pages, which consisted of attorney-client communications”); Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 6 (“Privileged materials withheld to date include: (1) privileged information related to FHFA OIG's retention of outside counsel, which is not relevant to the allegations against IG Wertheimer as she was recused from that matter and was not the deciding official; (2) emails from myself to FHFA-OIG staff regarding my request that they search records, which are not relevant to the IC's investigation; and (3) communications from me to FHFA-OIG staff regarding pending work projects, which are also not relevant to the IC's investigation.”); Ex. 52 (Email from FHFA OIG counsel to IC investigators) (“Several documents which are confidential and privileged are also being withheld in full, including attorney-client communications which were conducted to obtain or provide legal advice, as well as report drafts and other analytical documents reflecting FHFA-OIG's deliberative process.”); Ex. 54 (Letter from DIG Parker to IC Chairperson) at 6-7 (“I have concluded that Mr. DePasquale's testimony is demonstrably unnecessary to your investigation and that releasing him from his obligation to protect confidential information would have a seriously deleterious effect on his ability to perform the functions of his office.”); Ex. 56 (Email from FHFA OIG counsel to IC investigators) (“Please be advised that we have withheld several confidential, privileged documents in full. These include attorney-client communications which were conducted to obtain or provide legal advice. They also include report drafts, drafts of FHFA-OIG's correspondence to Congress, confidential attorney notes, and other analytical documents reflecting FHFA-OIG's deliberative process.”); Ex. 57 (Email chain between DIG Parker and CIGIE Chairperson) at 8 (“this issue is not one of waiver of privilege...absent a specific statutory instruction, a court order, or consent of the client, the lawyer's duties under Rules 1.6 and 1.13 remain intact.”); Ex. 61 (Email from FHFA OIG counsel to IC investigators) (“The withheld documents include law firm bills, communications with outside counsel regarding those bills, and other privileged communications between counsel.”); Ex. 66 (Letter from FHFA OIG counsel to IC investigators) at 1 (“We are reasonably assured that we have produced or provided for your review all relevant and responsive documents...except for a small number of privileged documents which are either not relevant to this investigation, or the disclosure of which would significantly impede our ability to provide legal advice to our client.”); and Ex. 68 (Letter from FHFA OIG counsel to IC investigators) (“As we stated in our prior letter, we have produced to [IC investigators] every document that we believe is relevant to this investigation... with the exception of a small number of privileged documents which we do not believe bear materially upon the allegations set forth in your April 4, 2018 letter and are therefore either not relevant to this investigation, or the disclosure of which would significantly impede our ability to provide legal advice to our client.”).

⁶⁷ Encl. 2, App. C, Ex. 19 (Wertheimer transcript) at 37-38, 67-68, 76. The IC investigators submitted a request for these documents, but many were never produced. App. D (Correspondence), Ex. 35 (Request for Additional

For documents FHFA OIG ultimately did produce, its Office of Counsel did so by improperly exercising a censorship function and conducting a page-by-page withholding decision prior to release. CC DePasquale and the FHFA OIG Office of Counsel asserted they, as opposed to IC investigators, were in the best position to determine which documents were responsive to the IC's requests based on their claim that, "[a]s the career counsel to this organization, we are fully able to determine whether a document is responsive to your questions or document requests, or more generally whether the document relates to the allegations you've disclosed to us."⁶⁸ CC DePasquale and the FHFA OIG Office of Counsel also withheld information they determined to be "not directly relevant to the allegations under investigation" or "unnecessary for the IC to complete a thorough investigation."⁶⁹ As noted above, for some of the withheld documents, FHFA OIG Office of Counsel only allowed IC investigators to conduct an *in camera* review; three FHFA OIG attorneys monitored the IC investigators as they reviewed the materials, and IC investigators were prohibited from making copies of relevant documents or taking notes regarding their content, even though the information was determined by the investigators to be relevant to the IC's investigation.⁷⁰ They did this despite the fundamental principle, underlying the passage of the IG Empowerment Act referenced above, that the party subject to oversight cannot credibly or fairly be the one who decides what information is made available to an OIG or, in this case, the IC, in conducting such an investigation.

Similarly, IC investigators sought to interview CC DePasquale, who possessed personal knowledge of facts and information relevant to multiple allegations. He declined, stating IG Wertheimer refused to waive her right to confidentiality.⁷¹ The IC then inquired how IG Wertheimer, who knew for over eight months that she was a subject of the IC's investigation,

Documents).

⁶⁸ Encl. 2, App. D (Correspondence), Ex. 60 (Email from FHFA OIG counsel to IC investigators) at 2.

⁶⁹ *Id.*

⁷⁰ Encl. 2 at 21. *See also* App. D (Correspondence), Ex. 63 (Email from FHFA OIG counsel to IC investigators) ("The documents at issue will be available in FHFA-OIG's offices for your *in camera* review next Thursday, May 24th at 10 AM. In order to prevent unauthorized release of information contained in these documents, we ask that you not make copies, take photos, or take notes regarding document contents."). The environment of CC DePasquale's *in camera* review is also telling as FHFA OIG observers were taking notes as to what the IC investigators were focusing on during their *in camera* examination and would not permit them to use the restroom without an escort. This can hardly be considered cooperation. Encl. 2 at 21.

⁷¹ In responding to IC investigators, CC DePasquale and the FHFA OIG Office of Counsel incorrectly identified IG Wertheimer as CC DePasquale's "client." Encl. 2, App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 2 ("IG Wertheimer declined to waive confidentiality based on advice received from four career attorneys in FHFA-OIG's Office of Counsel (OC)...Mr. DePasquale himself declined to be interviewed because he had not received a confidentiality waiver. He was therefore unavailable for that purpose."). *See also* App. D (Correspondence), Ex. 42 (Email from FHFA OIG counsel to IC investigators) ("please accept this email as confirmation that Len is not available for an interview. Each Inspector General (IG) is entitled to obtain legal advice from a counsel either reporting directly to the IG or to another IG. Based on the advice of career attorneys in FHFA-OIG's Office of Counsel (OC), IG Wertheimer will not waive confidentiality.").

could be allowed to control the OIG's decisions in the matter.⁷² In response, IG Wertheimer, having made her wishes known, withdrew her decision and delegated authority to DIG Parker, whom, as she acknowledged, she had previously caused to break down in her office.⁷³ Not surprisingly, DIG Parker followed IG Wertheimer's lead and likewise refused to make CC DePasquale available for an interview and declared the IC's investigation to be subordinate to IG Wertheimer's purported right to counsel and her OIG counsel's purported obligation to maintain her "client" secrets. DIG Parker also asserted, based on his own discussions with CC DePasquale, that CC DePasquale's testimony was "unnecessary" to the IC's investigation.⁷⁴ In sum, IG Wertheimer, CC DePasquale, and DIG Parker claimed for FHFA OIG the authority to decide what evidence the IC would be allowed to see and hear, and used this authority to withhold information relevant to the investigation.

B. No supportable basis to withhold evidence from IC investigators

IG Wertheimer, CC DePasquale, and DIG Parker had no supportable legal basis to withhold information and a witness from the IC under claims of attorney-client privilege and other doctrines. Instead of transparently cooperating with the IC in accordance with the IG Act and the public interest, they aggressively raised a litany of tenuous theories as to why they—despite being Executive Branch employees—should be allowed to withhold Executive Branch information from Executive Branch investigators.

For example, DIG Parker and CC DePasquale claimed that in enacting section 3(g) of the IG Act, Congress intended to create an attorney-client relationship between IG Wertheimer and her

⁷² Encl. 2, App. D (Correspondence), Ex. 50 (Letter from IC Chairperson to FHFA OIG Office of Counsel) ("We request that you immediately confirm in writing to the IC that the IG, who is a subject of the investigation, is directing employees to withhold access to information (including, but not limited to, documents and witnesses) pursuant to assertions of privilege, confidentiality, or generally restricted access. We also request that you confirm in writing that the IG has not recused herself from decisions concerning this IC investigation. If the IG is not the official deciding how and whether to respond to the IC investigation, then please identify who the official is.").

⁷³ Encl. 2, App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 2 ("IG Wertheimer rescinded that concurrence, and delegated authority to Mr. Parker to respond to the request by the FDIC-OIG to interview the Chief Counsel, including the authority to waive the Chief Counsel's obligations to protect confidences and secrets under governing rules, should Mr. Parker determine that doing so is appropriate."). *See also* App. C, Ex. 13 (Witness transcript) at 60-62; Ex. 20 (Witness transcript) at 48; and Ex. 19 (Wertheimer transcript) at 117-118. DIG Parker denied that he heard or observed IG Wertheimer make a staff member cry or make fun of someone for crying, telling IC investigators "that's just crazy talk." App. C, Ex. 11 (Parker transcript) at 15.

⁷⁴ Encl. 2, App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) at 6 ("I have concluded that Mr. DePasquale's testimony is demonstrably unnecessary to your investigation and that releasing him from his obligation to protect confidential information would have a seriously deleterious effect on his ability to perform the functions of his office.").

Chief Counsel that cannot be overridden by the IC's investigation.⁷⁵ This argument is wholly without merit.⁷⁶ Congress created section 3(g) to ensure IGs were advised by counsel independent of the agency, not to shield the OIG from IC oversight. This is evident by their statement that "[t]his provision does not require that each OIG have its own counsel. It does require that each Inspector General obtain advice from a lawyer that is employed by an Inspector General or the IG Council so as to preserve the independence of the Inspectors General."⁷⁷

Moreover, it is, of course, well established that a government attorney's duty of confidentiality is to the organization, not the organization's individual officers, as even CC DePasquale himself ultimately acknowledged, though he refused to apply it to his own conduct in this matter.⁷⁸ For nearly the past decade of the IC's existence, the majority of OIGs, including FHFA OIG, have expressly made their principal attorney subject to the IC's investigatory authority.⁷⁹ Conversely, we are not aware of *any* circumstance in which an IG or Counsel to the IG has maintained that the role of the latter shields their conduct or that of the IG from IC oversight.

DIG Parker and CC DePasquale further claimed attorney-client privilege and client confidentiality allowed FHFA OIG to withhold certain documents and information and they argued disclosure of these items would significantly impede the ability of FHFA OIG attorneys

⁷⁵ Email, DIG Parker to CIGIE Chairperson, dated March 14, 2019. *See also* Encl. 2, App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) and Ex. 57 (Email chain between DIG Parker and CIGIE Chairperson).

⁷⁶ Contrary to CC DePasquale and DIG Parker's assertions, neither the IC nor the CIGIE Chairperson conceded to DIG Parker and CC DePasquale's assertion that section 3(g) of the IG Act creates an attorney-client relationship between IG Wertheimer and her Chief Counsel. Such an interpretation of that provision is both incorrect and refuted by the legislative history. Encl. 2, App. D (Correspondence), Ex. 57 (Email chain between DIG Parker and CIGIE Chairperson).

⁷⁷ Committee on Homeland Security and Governmental Affairs, *Inspector General Reform Act of 2007*, 110th Cong. (Feb. 22, 2008) (S. Rept. 110-262). *See also* Government Accountability Office Report to the Congress, *Inspectors General: Independence of Legal Services Provided to IGs*, Report 95-15 (March 1995) ("...concern that IGs whose attorneys are organizationally located in agencies' OGCs will not always receive independent legal advice and that their own independence will be compromised as a result").

⁷⁸ Encl. 2, App. D (Correspondence), Ex. 29 (Email from CC DePasquale to CIGIE General Counsel) at 2 ("I think that it's important to reinforce the point here that myself and my lawyers are representing the Office in this matter and not the IG personally."). *See also In re Witness Before the Special Grand Jury 2000-2*, 288 F.3d 289, 294; *In re Lindsey*, 158 F.3d 1263 at 1273 (noting public interest in "transparent and accountable government").

⁷⁹ Each IG must annually identify for the IC which of its officials could not be independently investigated internally by the OIG; this includes officials who report directly to the IG. IG Act, section 11(d)(4)(B) and (C). Every year since 2012, 79% of OIGs, on average, have specifically designated their principal counsel as subject to the IC's authority. Some OIGs do not designate their counsel because the IC has inherent authority over allegations against individuals who report directly to the IG and section 3(g) of the IG Act requires the counsel to report directly to the IG.

to provide legal advice to their client.⁸⁰ These bare assertions are also unpersuasive.⁸¹ Throughout the Federal government, agencies deliberate and receive legal advice from their government attorneys on a daily basis, even though it is well established that their OIGs may access such materials.⁸² Furthermore, as noted above, such materials routinely have been provided to IC investigators. And IC investigators have routinely interviewed OIG attorneys about their work and OIG executives about the legal advice that they received from OIG counsel, without objection or difficulty.

DIG Parker and CC DePasquale's arguments also disregard the strong public interest in ensuring that any alleged misconduct by an IG is fully and credibly investigated and promptly resolved. Whatever the personal interests of the individual IG under investigation, the OIG as an organization, as well as the inspector general and oversight communities, have a substantial interest in rooting out wrongdoing within OIG leadership ranks, which may otherwise impair the ability of such offices to perform their duties and undermine the public's trust in their efforts. It is for this reason that the American Bar Association's (ABA) legal ethics rules recognize that, when the client is a governmental organization, the need to assure that a wrongful act is prevented or rectified outweighs the organization's interest in protecting its confidentiality.⁸³

Additionally, DIG Parker and CC DePasquale assert the IC's authority is limited to section 11(d) of the IG Act.⁸⁴ They argue section 11(d) does not contain explicit language authorizing the IC's access to OIG information; therefore, OIGs are not required to provide the IC with access. Again, the IC strongly disagrees. While the access rights reflected in section 6(a)(1)(A) of the IG Act clearly apply to agency operations over which OIGs have day-to-day oversight responsibilities, it is not limited to such operations.⁸⁵ Under the IG Act, an OIG conducting an

⁸⁰ Encl. 2, App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) and Ex. 66 (Letter from FHFA OIG counsel to IC investigators).

⁸¹ Given FHFA OIG's conduct, the IC will not readily concede the withheld information is "confidential" or "privileged."

⁸² IG Act, section 6(a). *See also* S. Rpt.95-1071 (1978) at 33-34 (An IG can access all relevant documents available to the agency he oversees, including deliberative or other materials exempt from disclosure to the public); and Office of Legal Counsel Opinion for the National Science Foundation, November 10, 2008 (OLC Opinion).

⁸³ ABA Model Rule 1.13, cmt. 9. *See also* Opinion 73-1, 32 FED. B.J. 71, 72 (1973), Federal Bar Association Ethics Committee, *The Government Client and Confidentiality* (the government lawyer's duty of representation is not to the agency or department itself, but to "the public interest entrusted to the department, agency or other governmental agency of his employment" and the duty of confidentiality yields when an official ceases to act in the public's interest).

⁸⁴ Encl. 4 at 12; Encl. 5 at 14.

⁸⁵ IG Act, section 6(a)(1)(A) (IGs are authorized "to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable establishment which relate to the programs and operations with respect to which that Inspector General has responsibilities under this Act.").

investigation on behalf of the IC has the same authorities to access records and information as it would in conducting an investigation of its agency.⁸⁶

Similarly, DIG Parker and CC DePasquale also argue the IC lacks the authority to access assertedly privileged OIG materials because the IG Act does not expressly provide for it in the same way that Congress did for the Office of Special Counsel (OSC) in its 2017 reauthorization act, 5 U.S.C. 1212(b)(5)(C)(1).⁸⁷ This argument is similarly flawed. Beyond disregarding the basic premise that cautions against drawing conclusions from an absence of Congressional action, it is very clear that the President and Congress created the IC to ensure that IGs and their senior leaders, who oversee the Federal government, are themselves accountable for misconduct.⁸⁸ To carry out the mandate to receive, review, and thoroughly investigate allegations of wrongdoing against such individuals, Congress clearly intended for the IC to have access to *all* information relevant to those allegations, even if that information might be privileged in other contexts and against third parties.⁸⁹ The IC simply cannot fulfill its statutory obligation to conduct an independent investigation into allegations of IG misconduct if an IG or her subordinates can assert an unreviewable right to censor and withhold evidence that the IC believes to be relevant to its inquiry.

⁸⁶ When the IC Chairperson requests assistance from an OIG to perform investigative services on the IC's behalf, the OIG is required to provide that assistance. Specifically, section 11(d)(6)(B)(i) provides, "At the request of the Chairperson of the Integrity Committee, the head of each agency or entity represented on the Council *shall* provide assistance necessary to the Integrity Committee." IG Act, section 11(d)(6)(B)(i) (emphasis added). Therefore, that investigation then becomes a matter "to which that Inspector General has responsibilities under this Act." Accordingly, the access provisions reflected in section 6(a)(1)(A) apply to that OIG's conduct of the IC's investigation. Furthermore, the requirement in section 11(d)(6)(B)(i) that entities "provide assistance necessary to the Integrity Committee" appears to apply to more than the OIG providing investigative assistance to the IC. The assistance mandate also applies to any other entity represented on CIGIE, including the employing OIG of a subject in an IC investigation. Accordingly, not only were the IC investigators entitled to timely access to records and other information under section 6(a)(1)(A) of the IG Act, FHFA OIG and its decision-making officials, including DIG Parker and CC DePasquale, had a duty to provide assistance necessary to the IC under section 11(d)(6)(B)(i) as well. They did not have the authority or discretion to impede, hinder, or serve as obstacles to the IC investigation.

⁸⁷ Encl. 2, App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson). *See also* App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) and Ex. 57 (Email chain between DIG Parker and CIGIE Chairperson). The OSC Reauthorization Act explicitly affirmed OSC's authority to have access to any information from agencies under its jurisdiction. 5 U.S.C. 1212(b)(5)(C)(1).

⁸⁸ *Burns v. United States*, 501 U.S. 129, 136 (1991) ("An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent."). *See also* S. Rep. No. 110-262 (Feb. 22, 2008) and H. Rept. 110-354 (Sept. 27, 2007). The IG Reform Act of 2008 established CIGIE as the unified council of all statutory IGs and codified the IC.

⁸⁹ While valid privilege claims might in certain circumstances appropriately limit the IC's subsequent and further release of documents, a claim of privilege provides no basis to withhold documents from the IC in the first instance, just as it does not authorize agencies to withhold documents from OIGs that oversee them. *See* OLC Opinion. Additionally, the IC offered to provide FHFA OIG with a copy of the draft Report of Investigation and an opportunity to submit information about claimed privileges to the IC for consideration before a final report is issued, but that effort to collaboratively address the dispute was rebuffed. Encl. 2, App. D (Correspondence), Ex. 31 (Letter from CIGIE General Counsel to CC DePasquale) at FN 1.

The IC and CIGIE leadership made numerous efforts to dissuade IG Wertheimer, CC DePasquale, and DIG Parker from these untenable contentions, without success.⁹⁰ Their recalcitrance is indefensible and fundamentally inconsistent with the IG Act and the express intent of Congress.⁹¹

Nevertheless, DIG Parker and CC DePasquale maintain they did not improperly impede the IC's investigation. CC DePasquale states he directed his staff to produce over 9,000 pages of documents to IC investigators, provided the opportunity to review over 500 more pages *in camera*, and only withheld 138 pages that *he* determined were not relevant to the IC's investigation.⁹² CC DePasquale fails to mention, however, that during the *in camera* review, IC investigators were not allowed to have copies of the documents and were prohibited from taking notes, even though they believed the information to be relevant. Consequently, they could not later assess and analyze it for their Report of Investigation.⁹³

Even so, DIG Parker argues 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.⁹⁴ Aside from the law that *requires* DIG Parker to provide IC investigators with

⁹⁰ Encl. 2, App. D (Correspondence), Ex. 29 (Email from CIGIE General Counsel to CC DePasquale) (“Chairperson Dahl has requested that you explain what legal or other grounds may prevent or limit any FHFA-OIG employees from speaking with investigators in this matter.”); Ex. 31 (Letter from CIGIE General Counsel to CC DePasquale) (“we respectfully disagree with FHFA-OIG’s interpretation of the application of the IG Act and other authorities to the matter at hand... If FHFA-OIG is choosing not to exercise this authority in contravention of the IG Act, the IC requests that FHFA-OIG provide identifying information for the official who is directing employees to withhold nonpublic information.”); Ex. 50 (Letter from IC Chairperson to FHFA OIG Counsel) (“The purpose of this letter is to address the most recent refusal by your office to provide the IC with access to documents and personnel at FHFA OIG. We view this refusal to be an obstruction of the investigation...The IC intends to send a letter shortly to the FHFA OIG official improperly resisting investigative requests to warn them that they are obstructing the OIG investigation and that the IC will take appropriate action. We request that you immediately confirm in writing to the IC that the IG, who is a subject of the investigation, is directing employees to withhold access to information (including, but not limited to, documents and witnesses) pursuant to assertions of privilege, confidentiality, or generally restricted access. We also request that you confirm in writing that the IG has not recused herself from decisions concerning this IC investigation. If the IG is not the official deciding how and whether to respond to the IC investigation, then please identify who the official is.”) and Ex. 57 (Email chain between CIGIE Chairperson and DIG Parker) (CIGIE Chairperson expresses concern about DIG Parker’s attempt to use certain provisions of the IG Act as a shield to prevent the IC from carrying out its legal mandate).

⁹¹ “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 Ensure Inspector General Access to All Records Needed for Independent Oversight*, 114th Cong. (Aug. 5, 2015).

⁹² Encl. 5 at 10.

⁹³ Encl. 2 at 21. *See also* App. D (Correspondence), Ex. 63 (Email from FHFA OIG counsel to IC investigators).

⁹⁴ Encl. 4 at 1.

access, this attempt to shift blame – to investigators – is stunning given the fact that the investigators are not required to justify the relevance of their requests to the subject of the investigation.

DIG Parker separately asserts that the IC lacks the authority to investigate and make findings of wrongdoing against him. DIG Parker argues the IG Act limits the IC’s authority and jurisdiction to specific categories of individuals to which he does not belong, as he does not directly report to IG Wertheimer and he was not the Acting IG at any time relevant to this case. Again, the IC finds DIG Parker’s argument to be unpersuasive.⁹⁵

Congress established the IC to receive, review, and refer for investigation allegations of wrongdoing made against IGs and staff members of the various OIGs.⁹⁶ Congress also 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. 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.⁹⁷

IG Wertheimer delegated to DIG Parker the authority to “respond to the request by [IC investigators] to interview the Chief Counsel, including the authority to waive the Chief Counsel’s obligations to protect confidences and secrets under governing rules, should Mr. Parker determine that doing so is appropriate.”⁹⁸ DIG Parker argues the IC has improperly interpreted this delegation of authority as an appointment to either the position of Acting or Interim Inspector General, and any resulting IC action would be in excess of its statutory authority.⁹⁹ However, the IC’s determination is not an expansion of the IC’s jurisdiction. Rather, once DIG Parker accepted IG Wertheimer’s delegation he agreed to act in her capacity as the IG for that purpose. Accordingly, the IC has jurisdiction over his actions pursuant to that

⁹⁵ *Id.* DIG Parker also claims the IC lacks authority to issue a finding against him because the timelines in section 11(d) of the IG Act are jurisdictional and any actions taken in excess of them are unauthorized. *Id.* at 4. The IC disagrees with DIG Parker’s characterization of its statutory authority. The timelines in section 11(d) are notification requirements, not jurisdictional; therefore, any IC action taken “in excess” of those timelines is not precluded. And, even if they were somehow viewed as creating substantive rights for the subjects of IC investigations, the fact that the conduct of the subjects so significantly delayed this matter would disqualify them from raising such a concern, both as a matter of equity and to deter other IC subjects from adopting similar obstructionary tactics to effectively run out the clock and escape accountability for their conduct.

⁹⁶ IG Act, section 11(d)(1). The IG Act defines “staff member” as any employee of an OIG who reports directly to an IG or is designated by an IG. *Id.*

⁹⁷ ICP&P, section 2. The IC has 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. IG Act, section 11(d)(7)(B). Moreover, the OLC Opinion cited by DIG Parker was written prior to the codification of the IC.

⁹⁸ Encl. 2, App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 2.

⁹⁹ Encl. 4 at 3.

delegation. To conclude otherwise would enable an IG to vest 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.

In this regard, IG Wertheimer's attempt to frame something akin to an alibi for her involvement in denying IC investigators access to information and witnesses is not worthy of belief. The record clearly shows that instead of fully recusing herself from the IC's investigation into allegations against her, IG Wertheimer was an active participant, and, notwithstanding her delegations, remained the *de facto* decision-maker to withhold information inasmuch as she refused to waive her so-called privilege.

Finally, rather than accepting *any* responsibility for denying IC access to FHFA OIG information, IG Wertheimer's response blames her subordinates. Likewise, her subordinates now blame her and the IC. Similar to a sleight-of-hand shell game, IG Wertheimer asserts that reviews of potentially responsive documents, decisions on relevance, and decisions to withhold documents on privilege grounds were made by CC DePasquale, or another FHFA OIG attorney, without her involvement, and she claims DIG Parker was the "sole" decision-maker on whether CC DePasquale would be made available to IC investigators for an interview.¹⁰⁰ Meanwhile, CC DePasquale says IG Wertheimer did not give him the authority to release client confidences and DIG Parker states he did not have enough information to allow him to waive IG Wertheimer's privilege.¹⁰¹ But the result is still the same: IC investigators were denied access to government information and a relevant government witness. The actions by these three experienced lawyers, IG Wertheimer, CC DePasquale, and DIG Parker, appear to have been intended to distract and delay the IC's investigation and, at the very least, had that impact—all while masking their individual accountability. Applicable law both required and permitted IG Wertheimer, DIG Parker, and CC DePasquale to make the requested documents and testimony available to the IC's investigators, including their claims of "privileged" government information, but through their concerted action, they failed to do so.¹⁰²

C. IG Wertheimer's inappropriate involvement in the investigation

The IC finds IG Wertheimer further abused her authority and engaged in conduct undermining the integrity expected of an inspector general by actively participating in FHFA OIG decisions involving the IC's investigation, of which she was a subject.¹⁰³ Rather than fully recusing

¹⁰⁰ Encl. 3 at 4-8.

¹⁰¹ Encl. 4 at 6; Encl. 5 at 13-14.

¹⁰² Even if DIG Parker was not subject to the IC's oversight, he was still required to provide to IC investigators all information they deemed relevant to the IC's investigation and his conduct would still be included in the IC's report as it is relevant to the actions of IG Wertheimer and CC DePasquale.

¹⁰³ The IC makes its determinations regarding whether IG Wertheimer's participation in FHFA OIG's response to the IC's investigation constituted substantiated wrongdoing solely pursuant to section 11(d) of the IG Act and the

herself from an investigation into her conduct whose outcome could impact her employment, including her salary and benefits, the evidence shows IG Wertheimer participated in information release decisions—central to her own defense—for almost a year after being notified that she was a subject.

The IC Chairperson notified IG Wertheimer that she was the subject of an IC investigation on March 16, 2018.¹⁰⁴ In June 2018, IG Wertheimer was informed of the IC’s requests to interview FHFA OIG attorney advisors and gave a limited delegation of authority to decide that issue to CC DePasquale.¹⁰⁵ In December 2018, IG Wertheimer was made aware of the IC’s request to interview CC DePasquale, she participated in discussions about the issue, and on January 9, 2019, she declined to waive the purported claim of client confidentiality, preventing IC investigators from interviewing CC DePasquale.¹⁰⁶ In February 2019, after the IC questioned her involvement, IG Wertheimer withdrew her decision and designated DIG Parker the authority to determine whether to grant the IC’s request to interview CC DePasquale.¹⁰⁷ On February 22, 2019, when the IC inquired as to the extent of her involvement following the delegation to DIG Parker, neither she nor DIG Parker squarely addressed the issue.¹⁰⁸

ICP&P. With that said, the ethical principles reflected in other authorities are instructive. For example, the IC notes that all Executive branch employees are generally prohibited by standards of conduct regulations from using their public office for their own private gain. 5 C.F.R. 2635.702. *See also* 18 U.S.C. § 208 (prohibiting Federal employees from participating personally and substantially in matters in which they have a financial interest); 5 C.F.R. 9001.101(a) (requiring all FHFA employees to comply with 5 C.F.R. part 2635). Additionally, while IG Wertheimer was not acting in a representational capacity as a lawyer, this ethical principal is also echoed in ABA Model Rule 1.7(a), which states that “A concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.” *See also id. at cmt. 10* (“[I]f the probity of a lawyer’s own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.”).

¹⁰⁴ Encl. 2, App. D (Correspondence), Ex. 20 (Letter from IC Chairperson to IG Wertheimer: Notification of IC Investigation).

¹⁰⁵ Encl. 2, App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 3 (“After being informed of the IC’s requests that the FHFA OIG issue a blanket waiver of privileges and that it sought to interview FHFA OIG attorney advisors, IG Wertheimer delegated the authority to [CC DePasquale] to decide these privilege issues on June 19, 2018.”).

¹⁰⁶ Encl. 2, App. D (Correspondence), Ex. 42 (Email from FHFA OIG counsel to IC investigators) at 1 (“Based on the advice of career attorneys in FHFA OIG’s Office of Counsel (OC), IG Wertheimer will not waive confidentiality.”). *See also* Encl. 4 at 5.

¹⁰⁷ *See* email from DIG Parker to IC Chairperson on February 11, 2019 (“Inspector General Laura Wertheimer has delegated to me her authority to respond to [investigator’s] November 19, 2018, request to interview FHFA-OIG Chief Counsel...”). *See also* Encl. 2, App. D (Correspondence), Ex. 57 (Email chain between DIG Parker and CIGIE Chairperson) at 5 (“The Inspector General delegated to me the authority to determine whether to authorize...the OIG Chief Counsel, to be interviewed as part of the IC inquiry.”).

¹⁰⁸ Encl. 2, App. D (Correspondence), Ex. 54 (Letter from DIG Parker to IC Chairperson) and Ex. 55.

As a subject of the IC's investigation, IG Wertheimer had the responsibility to fully recuse herself and avoid any official involvement in matters affecting her personal interests. In defining the meaning of recusal, the Office of Government Ethics states, "[a]n employee should refrain, abstain, refuse, relinquish, forbear, forgo, hold off, keep away, give up, decline, desist, discontinue, end, cancel, close, quit, terminate, stop, halt, cease, drop, stay away, shun, avoid participation in the matter before him or her. In other words, just don't do it."¹⁰⁹

The IC gave IG Wertheimer and FHFA OIG numerous opportunities to explain her personal involvement in this matter, to no avail.¹¹⁰ Without directly answering the IC's question regarding recusal from the IC's investigation, IG Wertheimer's personal counsel stated, "Ms. Wertheimer has never been, and continues not to be, the decisionmaker for access issues arising from the IC investigation, aside from her now withdrawn concurrence with the unanimous advice of career counsel to protect FHFH [sic] OIG's applicable privileges."¹¹¹ IG Wertheimer also argues that the IC was made aware of the relevant actions she performed during the IC's investigation, and the IC never requested her recusal – seemingly suggesting the IC had somehow ratified her actions. She further argues that Congress did not include a recusal requirement in section 11(d) of the IG Act, suggesting that "[i]f Congress had intended for IGs to recuse themselves in every IC investigation, it could easily have stated such a requirement in Section 11 of the Inspector General Act."¹¹²

Again, the IC finds these arguments lack merit. We find that her continued involvement clearly constituted an abuse of authority and did not meet the standard of integrity expected of an IG. Nevertheless, IG Wertheimer appears to maintain, even in hindsight, that an IG who is the subject of an IC investigation has to be told by Congress or the IC to recuse herself.¹¹³ Such an

¹⁰⁹ OGE Informal Advisory Memorandum, "Memorandum to Designated Agency Ethics Officials Regarding Recusal Obligation and Screening Arrangements," 1999 WL 33308429 (April 26, 1999), at 1.

¹¹⁰ Encl. 2, App. D (Correspondence), Ex. 50 (Letter from IC Chairperson to FHFA OIG counsel). Neither IG Wertheimer nor any other FHFA OIG staff member affirmed that IG Wertheimer was recused from the IC's investigation. App. D (Correspondence), Ex. 55 (Letter from IG Wertheimer's personal counsel to IC Chairperson). *See also* App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) and Ex. 54 (Letter from DIG Parker to IC Chairperson).

¹¹¹ Encl. 2, App. D (Correspondence), Ex. 55 (Letter from IG Wertheimer's personal counsel to IC Chairperson) at 1. There is no evidence that IG Wertheimer sought and obtained authorization from a designated agency official to participate in discussions about the IC's investigation.

¹¹² Encl. 3 at 15.

¹¹³ IG Wertheimer 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 was also a partner at Wilmer Cutler Pickering Hale and Dorr prior to her appointment as IG. <https://www.fhfaoig.gov/meet-inspector-general>. Moreover, while we do not believe she needed to be told, the IC notes that it did seek confirmation of IG Wertheimer's recusal, but to no avail as discussed above. Neither IG Wertheimer nor any other FHFA OIG staff member affirmed that IG Wertheimer was recused from the IC's investigation. Encl. 2, App. D (Correspondence), Ex. 55 (Letter from IG Wertheimer's personal counsel to IC Chairperson). *See also* App. D (Correspondence), Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) and Ex. 54 (Letter from DIG Parker to IC Chairperson)

assertion is inconsistent with the principles expected of an IG and contradicts her previous testimony before Congress in which she acknowledged, “the need to get ahead of potential conflicts of interest” and her “strong interest in avoiding either actual or perceived conflicts of interest, or even the appearance of a conflict.”¹¹⁴

III. Other Allegations of Wrongdoing

IG Wertheimer, CC DePasquale, and DIG Parker’s wrongful withholding of evidence prevented the IC from having the necessary information to make findings on the remaining allegations of misconduct. For example, the IC initially made a preliminary finding that IG Wertheimer abused her authority and used coercive personnel practices on employees in the FHFA OIG Office of Audits (OA); however, in light of her comments and on further consideration of the evidence it was able to obtain on this issue, the IC concludes that it does not have sufficient evidence to either substantiate or unsubstantiate these underlying allegations. Nevertheless, the IC remains concerned by the evidence before it, which suggests that IG Wertheimer may have imposed a new performance requirement three-quarters into the performance year in an improper effort to pressure OA staff to accept a buyout.

Specifically, on June 30, 2015, IG Wertheimer announced at an “all-hands meeting” that employees in report-writing offices were “expected to complete specific projects and publish findings and recommendations” (referred to herein as “publication requirement”) during that performance cycle to receive more than a minimally successful rating on their annual appraisal.¹¹⁵ This announcement occurred nine months into the performance appraisal period, which ended on September 30, 2015. At the time of the announcement, only five of the 27 employees performing audit work in the OA had met the publication requirement.¹¹⁶

One month after IG Wertheimer’s announcement regarding the publication requirement, FHFA OIG offered a Voluntary Separation Program (buyout), which gave OA employees the option to leave FHFA OIG by September 12, 2015, with six months' salary. Sixteen OA employees accepted the buyout, 11 of whom indicated that they did so due to the change in the performance

¹¹⁴ Committee on Banking, Housing, and Urban Affairs, *Nomination of Laura S. Wertheimer*, 113th Cong. (June 17, 2014) (S. Hrg. 113-470) at 12. IG Wertheimer also assured Congress that if she were confirmed she would ensure FHFA OIG “maintain both actual and avoid any appearance of lack of independence.” *Id.* at 16.

¹¹⁵ Encl. 2, App. D (Documents), Ex. 8 (All-hands script) (noting a minimally successful rating is 2 out of 5). This requirement applied to the Office of Audits, Office of Evaluations, and the Office of Compliance. Twenty of the 29 witnesses interviewed by OSC consented to his/her release of their OSC transcript to IC investigators (OSC Exhibits). Witnesses agreed that “publish” essentially meant posting a final report on the FHFA OIG website. OSC Ex. 1 (Witness transcript) at 6-9; OSC Ex. 7 (Witness transcript) at 18-20; and OSC 19 (Witness transcript) at 19-21. IG Wertheimer also confirmed that “publish” meant the report was posted on the website. OSC 20 (Wertheimer transcript) at 155-156.

¹¹⁶ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). The OA had a total of 32 employees; three of whom were performing administrative duties and two were on military duty. Therefore, only 27 employees were performing audit work during the relevant period. *Id.* at 1-2.

standards.¹¹⁷ IG Wertheimer then transferred four of the remaining OA employees to other offices before the end of the performance period, which caused them to be rated under different performance plans for that performance year.¹¹⁸ Of the employees who remained, several said they would have taken the buyout if they had not been part of a team that had published a report.¹¹⁹

The Office of Personnel Management (OPM) states performance elements and rating standards "should be measurable, understandable, verifiable, equitable, and achievable."¹²⁰ In a prior inquiry into this issue by the Office of Special Counsel, every auditor interviewed said the new publication requirement was not fair or equitable, and many said it was not achievable.¹²¹ Numerous auditors felt it was unreasonable to expect them to publish in the short timeframe between the announcement at the all-hands meeting and the end of the performance period, especially since auditors have minimal control over whether a report gets published and when.¹²² Some OA employees had difficulty meeting the publication requirement because they had worked on reports scheduled to be published in 2015, but which IG Wertheimer either cancelled or delayed upon her arrival.¹²³ Moreover, because the Acting DIG for Audits was neither an auditor nor an accountant, witnesses stated the review process was substantially slower than in the past, reducing their prospects for publication by September 30, 2015.¹²⁴

When OSC reviewed these facts, it found that no prohibited personnel practice occurred because none of the OA employees who had not published a report actually received a less than satisfactory review; they either took the buyout and left FHFA OIG (thereby arguably achieving IG Wertheimer's goal) or they were transferred to another section shortly before the end of the

¹¹⁷ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). *See also* OSC Ex. 3 (Witness transcript) at 14; OSC Ex. 6 (Witness transcript) at 21-23; and OSC Ex. 9 (Witness transcript) at 22.

¹¹⁸ Encl. 2, App. C, Ex. 10 (Witness transcript) at 37-38. *See also* App. D (Documents), Ex. 3 (Meeting notes).

¹¹⁹ OSC Ex. 9 (Witness transcript) at 22.

¹²⁰ U.S. Office of Personnel Management, *A Handbook for Measuring Employee Performance*, March 2017.

¹²¹ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). *See also* OSC Ex. 9 (Witness transcript) at 19; OSC Ex. 12 (Witness transcript) at 22-23; and OSC Ex. 13 (Witness transcript) at 23.

¹²² OSC Ex. 13 (Witness transcript) at 23-24 (stating the publication requirement could have been appropriate at a different time when the OA was not struggling with a change in leadership and the resulting loss of "momentum" the changes created). *See also* OSC Ex. 3 (Witness transcript) at 13-14; OSC Ex. 4 (Witness transcript) at 11-12; OSC Ex. 8 (Witness transcript) at 25-26; and OSC Ex. 17 (Witness transcript) at 11-12.

¹²³ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). *See also* App. C, Ex. 13 (Witness transcript) at 26-27; OSC Ex. 6 (Witness transcript) at 25; and OSC Ex. 11 (Witness transcript) at 15.

¹²⁴ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). *See also* OSC Ex. 19 (Witness transcript) at 114-116; OSC Ex. 8 (Witness transcript) at 11-13, 20-21; and OSC Ex. 18 (Witness transcript) at 17.

performance period.¹²⁵ According to OSC, IG Wertheimer's announcement that auditors would receive a minimally successful rating unless they published a report threatened a personnel action, but such threats do not violate 5 U.S.C. 2302(b)(12). However, OSC referred its conclusions to the IC, suggesting that the problematic conduct might be wrongdoing under the IC's broader standard.¹²⁶ However, the lack of cooperation by IG Wertheimer and FHFA OIG, including the failure to provide full documentation or permit the interview of a key witness, left the IC without the necessary facts to make a determination on this issue. The lack of sufficient evidence to resolve this issue underlines the seriousness of the non-cooperation outlined above, and conversely why full cooperation with the IC is essential for it to function as an effective accountability mechanism with regard to serious allegations of wrongdoing by IGs and senior OIG personnel.

IV. Lack of Cooperation and Conduct Undermining the Integrity Reasonably Expected of an IG

The IC finds IG Wertheimer exhibited a lack of cooperation and engaged in conduct undermining the integrity reasonably expected of an IG. Foremost was her central role in creating and fostering the conditions by which her staff of government lawyers frustrated and denied IC investigators and the IC from learning the full truth. Because of her sustained unwillingness to be candid and forthcoming with FHFA OIG information, the IC has an incomplete picture of the facts surrounding these allegations and is therefore unable to provide meaningful oversight. Nevertheless, IG Wertheimer asserts in her response that the IC's draft report contained no factual discussion of her "purported lack of candor," nor did it identify a single statement that "fails to disclose something that should have been disclosed" to make it more accurate and complete.¹²⁷

While IG Wertheimer's unceasing refusal to disclose all requested information supports the IC's findings, it is not the only example.

¹²⁵ Encl. 2, App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). *See also* App. D (Documents), Ex. 3 (Meeting notes). Under 5 U.S.C. 2302(b)(12), it is a prohibited personnel practice (PPP) to "take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title." Thus, OSC was unable to conclude that IG Wertheimer's efforts constituted a PPP because under section (b)(12), a personnel action must occur for the provision to be violated. App. D (Correspondence), Ex. 12 (Letter from OSC to IC Chairperson). FHFA OIG did not give any OA employee a "2" or "minimally successful" rating based on the new standard so there was no personnel action to satisfy the initial element of a section (b)(12) violation.

¹²⁶ OSC makes its findings under 5 U.S.C. 2302(b), but the IC makes its findings in accordance with section 11(d) of the IG Act and the ICP&P.

¹²⁷ Encl. 3 at 3. While IG Wertheimer's actions may meet the definition of lack of candor under *Ludlum v. DOJ*, 278 F.3d 1280, 1284 (2002) (stating lack of candor is a broad and flexible concept whose elements "depend upon the particular context and conduct involved. It may involve a failure to disclose something that, in the circumstances, should have been disclosed in order to make the given statement accurate and complete."), the IC makes its findings in accordance with section 11(d) of the IG Act and the ICP&P.

- IG Wertheimer claims she had no role in the decision to release documents or make CC DePasquale available, yet multiple witnesses point to her as a reason for the denial.¹²⁸
- IG Wertheimer minimized her abusive treatment of her staff, rather than conceding clear evidence to the contrary. Particularly disturbing were her explanations as to why she referred to SE1 as a “weasel,” and why she purchased and distributed multiple copies of a children’s book on weasels to senior staff.¹²⁹
- IG Wertheimer initially denied referring to two witnesses as “Boris and Natasha,” before admitting that she “may” have referred to them as such, and then acknowledging she was sure she had done so.¹³⁰

Such claims, belied by the limited evidence that IC investigators were able to gather, do not evince the cooperation, integrity, and oversight leadership reasonably expected of a federal inspector general.

Recommendations of the Integrity Committee

The IC determines by a preponderance of the evidence that IG Wertheimer abused her authority and engaged in conduct that undermines the integrity reasonably expected of an IG. IG Wertheimer’s inappropriate conduct is especially disconcerting given her extensive legal and professional experience, and the nature and breadth of her actions demonstrate that her behavior was not aberrational. In that regard, her treatment of selected FHFA OIG staff members and witnesses suggests she did not appreciate the fundamental leadership and oversight principles

¹²⁸ Encl. 2, App. D (Correspondence), Ex. 42 (Email from FHFA OIG counsel to IC investigators) at 1 (“...please accept this email as confirmation that Len is not available for an interview... Based on the advice of career attorneys in FHFA-OIG’s Office of Counsel (OC), IG Wertheimer will not waive confidentiality.”); Ex. 51 (Letter from FHFA OIG counsel to IC Chairperson) at 1-2 (“IG Wertheimer declined to waive confidentiality based on advice received from four career attorneys in FHFA-OIG’s Office of Counsel (OC). Accordingly, Mr. DePasquale declined to be interviewed.”); Ex. 54 (Letter from DIG Parker to IC Chairperson) at 8 (“At bottom, nothing in the text of section 3(g) evinces a Congressional intent to authorize the IC to abrogate, or insert itself into the relationship between an IG and his or her counsel simply because an investigation is underway.”); and Ex. 66 (Letter from FHFA OIG counsel to IC investigators) at 2, FN 4 (“In the absence of a client’s authorization to release these documents, we believe that they must be withheld, per section 3(g) of the IG Act, as amended, and Rule 1.6 of the D.C. Rules of Professional Conduct.”).

¹²⁹ IG Wertheimer claimed that she called SE1 a weasel because he was engaging in duplicitous and treacherous actions, not because he cooperated with Congress, and she stated she purchased the books to lighten the mood for her staff. Encl. 2, App. C, Ex. 19 (Wertheimer transcript) at 95-96. These assertions are contradicted by multiple employees, who state that IG Wertheimer did not like the fact that SE1 and other employees were cooperating with Congress and they received the weasel book shortly after SE1’s congressional interview. App. C, Ex. 2A (Witness transcript) at 38-39; Ex. 8A (Witness transcript) at 21, 25, 31; Ex. 13 (Witness transcript) at 60. *See also* App. D (Correspondence), Ex. 14 (Complaint to the IC) at 2.

¹³⁰ Encl. 2, App. C, Ex. 19 (Wertheimer transcript) at 98-99.

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reasonably expected of a federal inspector general. The IC concludes that misconduct of this nature warrants consideration of substantial disciplinary action, up to and including removal.

Additionally, the IC concludes by a preponderance of the evidence that CC DePasquale and DIG Parker also abused their authority when they, as government employees, repeatedly and improperly participated in denying legitimate IC requests for access to government information and a key witness, who was CC DePasquale himself. While IG Wertheimer bears ultimate responsibility, the evidence supports that they were willing participants acting individually and/or in concert with IG Wertheimer. We can think of no reasonable criteria under these circumstances under which CC DePasquale, as a government employee, could flatly refuse to be interviewed by government investigators. So too with DIG Parker's inexplicable ratification of that refusal. Accordingly, the IC recommends that each be subject to appropriate disciplinary action. 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,

A handwritten signature in black ink that reads "K. H. Winters". The signature is written in a cursive style with a long horizontal stroke at the end.

Kevin H. Winters
Chairperson
Integrity Committee

Enclosures:

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