

## U.S. Department of Justice



Federal Bureau of Investigation  
935 Pennsylvania Ave., N.W.

Michael J. McManus, Esquire  
Drinker Biddle & Reath LLP  
Suite 1100  
1500 K Street, N.W.  
Washington, D.C. 20005-1209

Washington, D.C. 20535-0001

**MAY 05 2000**

Integrity Committee  
Subject of Request: No. 212

FOIPA No. 913019-1 /190- HQ-1314630

Dear Requester:

Enclosed are copies of documents from FBI records. Excisions have been made to protect information exempt from disclosure pursuant to Title 5, United States Code, Section 552 (Freedom of Information Act) and/or Section 552a (Privacy Act). In addition, where excisions were made, the appropriate exempting subsections have been cited opposite the deletions. Where pages have been withheld in their entirety, a deleted page information sheet has been substituted showing the reasons or basis for the deletion. The subsections cited for withholding information from the enclosed documents are marked below:

## Section 552

## Section 552a

☐ (b)(1)

☐ (b)(7)(A)

☐ (d)(5)

☒ (b)(2)

☐ (b)(7)(B)

☐ (j)(2)

☐ (b)(3) \_\_\_\_\_

☒ (b)(7)(C)

☐ (k)(1)

☐ (b)(7)(D)

☐ (k)(2)

☐ (b)(7)(E)

☐ (k)(3)

☐ (b)(7)(F)

☐ (k)(4)

☐ (b)(4)

☐ (b)(8)

☐ (k)(5)

☒ (b)(5)

☐ (b)(9)

☐ (k)(6)

☐ (b)(6)

☐ (k)(7)

(See Form OPCA-16a, enclosed, for an explanation of these exemptions.)

Pursuant to your request, 554 pages(s) were reviewed and 554 page(s) are being released.

During the review of material pertinent to the subject of your request, documents were located which

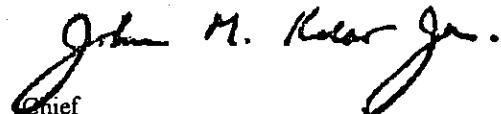
☐ originated with another Government agency(ies).

These documents were referred to that agency(ies) for review and direct response to you.

☐ contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

- ☒ If you desire, you may appeal any denials contained herein. Appeals should be directed in writing to the Co-Director, Office of Information and Privacy, U.S. Department of Justice, Flag Building, Suite 570, Washington, D.C. 20530-0001 within sixty days from receipt of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.
- ☐ The enclosed material is from the main investigative file(s) in which the subject of your request was the subject of the investigation. There are additional references to the subject(s) of your request in files relating to other individuals, organizations, events or activities. These additional mentions or references have not been reviewed to determine if, in fact, they are identifiable with the subject(s) of your request. Our experience has shown that such references are frequently similar to information contained in the processed main file(s). We will process these references if you now make a specific request for them. However, because of a significant increase in FOIPA requests and an expanding backlog, we have given priority to the processing of main investigative files and can only complete the processing of these additional references as time and resources permit.
- ☒ See additional information which follows

Sincerely yours,



Chief

Freedom of Information-  
Privacy Acts Section

Office of Public and Congressional Affairs

Enclosures ( 3 )

A search of the indices to the central records system files at FBI Headquarters (FBIHQ) revealed one main file responsive to your request. FBIHQ file 296-1240657 on the Integrity Committee (IC) No. 212, serials 6, 7, 22 and a document dated 7/13/99, contain investigatory data pertaining to several individuals. Only the documents containing information pertaining to the subject of your request have been processed from these serials. The documents pertaining to other subjects in these serials are considered to be outside the scope of your request. Whenever possible, the o/s material was released, however, it was withheld if it would have been otherwise exempt from disclosure. For your information, the exemptions that would have applied to that material had it been within the scope of your request have also been noted on the document.

Pursuant to Title 28, Code of Federal Regulations, Sections 16.11 and 16.49, there is a fee of ten cents per page for duplication for the enclosed documents. No fees are assessed for the first 100 pages. Please submit your check or money order in the amount of \$45.40 payable to the Federal

Bureau of Investigation. To insure proper identification of your request, please return this letter or include the FOIPA request number with your payment.

## EXPLANATION OF EXEMPTIONS

## SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b) (1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b) (2) related solely to the internal personnel rules and practices of an agency;
- (b) (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b) (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b) (5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b) (6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b) (7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b) (8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b) (9) geological and geophysical information and data, including maps, concerning wells.

## SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d) (5) information compiled in reasonable anticipation of a civil action proceeding;
- (j) (2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k) (1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k) (2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k) (4) required by statute to be maintained and used solely as statistical records;
- (k) (5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k) (6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k) (7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

*Freedom of Information*  
*and*  
*Privacy Acts Release on*  
*Subject: INTEGRITY COMMITTEE*  
*No. 212*  
*File #: 296-HQ-1240657*  
*(Section 2)*



*Federal Bureau of Investigation*

February 12, 1998

Mr. C. Austin Fitts  
Chairman  
Hamilton Securities Group, Inc.  
7 Dupont Circle, NW  
Washington, D.C. 20036-1108

IC # 212

Dear Mr. Fitts:

The purpose of this letter is to advise you of the receipt of your letter, dated January 30, 1998. The information you provided will be included in the Integrity Committee's review.

Sincerely,

NS/

Neil J. Gallagher  
Acting Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

1 - [REDACTED]  
1 - [REDACTED]  
MCW:mcw (6)

1 - [REDACTED]  
1 - [REDACTED]

mcw

296-HQ-1446657-5

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APPROVED:

Crim. Inv.	Inspection	Training
CJIS	Laboratory	Off. of Cong. & Public Affs.
Finance	National Sec.	Adm. Serv.
Director	Gen. Counsel	CIA
Deputy Director	Info. Res.	Personnel
		Cong. Affs.

Dep. Dir. \_\_\_\_\_  
Chief of Staff \_\_\_\_\_  
Off. of Gen. Counsel \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
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Off. of EEOA \_\_\_\_\_  
Off. of Public & Cong. Affs. \_\_\_\_\_  
Director's Office \_\_\_\_\_

MAIL ROOM ☐



U. S. Department of Justice

APR 03 1998

BY FIRST-CLASS MAIL AND FACSIMILE

Mr. Thomas J. Picard  
Chairman, Integrity Committee  
President's Council on Integrity and Efficiency  
Room 7116, J. Edgar Hoover Building  
9th Street and Pennsylvania Avenue, NW  
Washington, DC 20535

Dear Mr. Picard:

This letter responds to matters that the Integrity Committee has referred to the Public Integrity Section to determine whether the information provided is sufficient to warrant a criminal investigation. Set forth below is a brief summary of each matter and our view concerning whether a criminal investigation is warranted.

o/s  
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296-HQ-148062 1-6





and improper media leaks by OIG about the investigation was causing Hamilton to go out of business. In Fitts' letter to the IC, Fitts stated that Hamilton has been rendered insolvent as a result of "Inspector General 'lynch mobbing.'"

After reviewing the letter and the attachments, the Public Integrity Section concludes that the allegations in the complaint do not provide sufficient information to warrant a criminal investigation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

- ☐ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

- ☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.
- ☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

Pages were not considered for release as they are duplicative of \_\_\_\_\_

2 Page(s) withheld for the following reason(s): outside scope of request

- ☒ The following number is to be used for reference regarding these pages:

296-1240657-6 p4-5.

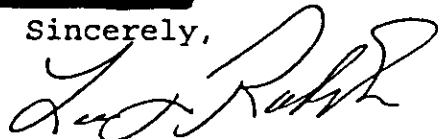
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ds  
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[REDACTED]

Thank you for referring these matters for our review. As always, if the Integrity Committee reviews these matters further and develops evidence of federal crimes, please do not hesitate to contact this Section for further prosecutive review.

b2  
b7c [REDACTED] If you have any questions, please contact Trial Attorney [REDACTED] of this Section at [REDACTED]

Sincerely,



Lee J. Radek  
Chief  
Public Integrity Section  
Criminal Division

cc: [REDACTED]

FBI

Integrity Committee

INTEGRITY COMMITTEE (IC)  
OF THE PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY (PCIE)  
MEETING OF 4/13/98

Notes of Program Analyst [REDACTED]

MEETING ATTENDEES

67C  
Mr. Thomas J. Pickard, Assistant Director, Criminal Investigative Division, FBI - Chairman  
Mr. Scott Dahl, Attorney, Public Integrity Section (PIS), Department of Justice (DOJ)  
[REDACTED] Supervisory Special Agent, Governmental Fraud Unit (GFU), FBI  
(Working Group)  
Mr. Joe Gangloff, Principal Deputy, PIS, DOJ  
[REDACTED] Office of Government Ethics (OGE)  
Ms. Kristine Martin, Attorney, Office of General Counsel, FBI (Working Group)  
Mr. Patrick McFarland, IG, Office of Personnel Management (OPM)  
Mr. Stephen Potts, Director, OGE  
Mr. William Reukauf, Acting Special Counsel, Office of Special Counsel (OSC)  
Mr. Walter Stachnick, IG, Securities Exchange Commission  
Mr. Roger Viadero, IG, Department of Agriculture  
[REDACTED] Program Analyst, GFU, FBI (Working Group)

I. OPENING INTRODUCTIONS/REMARKS BY ACTING CHAIRMAN GALLAGHER

- The meeting began at approximately 2:00 p.m.

II. NEW CASES

IC #:

Subject:

Complainant:

Date Received:

ALLEGATION(S)

PIS ANALYSIS

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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3 Page(s) withheld for the following reason(s): outside scope of request

- ☒ The following number is to be used for reference regarding these pages:

296 - 1240657 - 7 p 2-4

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IC #: 212  
Subject(s): IG Susan Gaffney, Department of Housing and Urban Development (HUD)  
Complainant: C. Austin Fitts, Chairman, Hamilton Securities Group  
Date Received: 12/23/97

### ALLEGATIONS

- HUD IG has conducted an inappropriate investigation against Hamilton Securities. The investigation was wide-ranging and unfocused. OIG repeatedly leaked proprietary and confidential info about the investigation to the press in an attempt smear, slander, and intimidate.

### PIS ANALYSIS

"C. Austin Fitts, President of the Hamilton Securities Group, Inc., sent the IC a copy of a civil complaint filed by Hamilton Securities against HUD, Secretary Andrew Cuomo, Assistant Secretary Nicholas Retsinas, and Inspector General Susan Gaffney. The complaint alleged that HUD's OIG investigation of Hamilton and improper media leaks by OIG about the investigation was causing Hamilton to go out of business. In Fitts' letter to the IC, Fitts stated that Hamilton has been rendered insolvent as a result of "Inspector General 'lynch mobbing.'"

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"After reviewing the letter and the attachments, the Public Integrity Section concludes that the allegations in the complaint do not provide sufficient information to warrant a criminal investigation. [REDACTED]

### NARRATIVE

New case.

### IC DISPOSITION

The IC noted that this complaint lacked specific allegations against the IG. The IC decided to refer this complaint to the IG for information and close.

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IC #:  
Subject(s):  
Complainant:  
Date Received:

[REDACTED]

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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Page(s) withheld for the following reason(s): outside scope of request

- ☒ The following number is to be used for reference regarding these pages:

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[REDACTED]

[REDACTED]

- The meeting adjourned at approximately 4:15 p.m.



May 4, 1998

The Honorable Susan Gaffney  
Inspector General  
Department of Housing and Urban Development  
451 7th Street, SW  
Washington, D.C. 20410

IC # 212

Dear Ms. Gaffney:

Enclosed is a copy of a complaint received by the Integrity Committee (IC) of the President's Council on Integrity and Efficiency. Pursuant to Executive Order (EO) 12993, the IC is charged with reviewing allegations of administrative wrongdoing against Inspectors General and certain senior members of an Inspector General's staff

The enclosed complaint is from C. Austin Fitts, President of the Hamilton Securities Group, Inc. Ms. Fitts sent the IC a copy of a civil complaint filed by Hamilton Securities against the Department of Housing and Urban Development (HUD). Ms. Fitts' alleged that a HUD Office of Inspector General (OIG) investigation of Hamilton and improper media leaks by the OIG about the investigation was causing Hamilton to go out of business. Ms. Fitts' stated that Hamilton has been rendered insolvent as a result of "Inspector General 'lynch mobbing.'"

This complaint was initially referred to the Public Integrity Section (PIS), Department of Justice for a determination whether the allegations, if proven, would constitute violations of federal criminal law that would be considered prosecutable. After review, the PIS advised that the complaint does not provide sufficient information to warrant a criminal investigation.

296-HQ-1240657-8

Based on that determination, pursuant to its authority under Executive Order 12993, the complaint was presented to the IC for administrative review. After review, the IC determined

Dep. Dir. \_\_\_\_\_  
ADD Adm. \_\_\_\_\_  
ADD Inv. \_\_\_\_\_  
Asst. Dir.:  
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Off. Liaison & \_\_\_\_\_  
Int. Affs. \_\_\_\_\_  
Off. of Public Affs. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

1 - Mr. Pickard

MCW:mcw

MAIL ROOM

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1 - [redacted]

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The Honorable Susan Gaffney

that the complaint did not contain allegations of wrongdoing specifically against you or your Deputy that would rise to a level of consideration by the IC. As such, this complaint is being referred to you for your information and whatever action is deemed appropriate.

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b7C [ The IC will take no further action concerning this matter and has placed this file in a closed status. Questions concerning this letter should be directed to Supervisory Special Agent [REDACTED] liaison to the IC, at [REDACTED]

Sincerely,

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

Enclosure

1 - Mr. G. Edward DeSeve  
Acting Chairman  
President's Council on Integrity and Efficiency  
Acting Deputy Director for Management  
Office of Management and Budget  
Old Executive Office Building, Room 350  
Washington, D.C. 20503

**APPROVED:** *LA/KIT/2*  
Crim. Inv. \_\_\_\_\_ Inspection \_\_\_\_\_ Training \_\_\_\_\_  
CJIS \_\_\_\_\_ Laboratory \_\_\_\_\_ Off. of SDO \_\_\_\_\_  
Finance \_\_\_\_\_ National Sec. \_\_\_\_\_ Affairs \_\_\_\_\_  
Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ OPR \_\_\_\_\_ Off. of Int. Aff. \_\_\_\_\_  
Deputy Director \_\_\_\_\_ Info. Res. \_\_\_\_\_ Personnel \_\_\_\_\_ Cong. Affs. \_\_\_\_\_

May 4, 1998

C. Austin Fitts  
Chairman  
Hamilton Securities Group, Inc.  
7 Dupont Circle, NW  
Washington, D.C. 20036-1108

IC # 212

C. Austin Fitts:

This is to advise you that the Integrity Committee (IC) has completed its review of your complaint against the Office of Inspector General, Department of Housing and Urban Development (HUD).

Your complaint was initially referred to the Public Integrity Section (PIS), Department of Justice for a determination whether your allegations, if proven, would constitute violations of federal criminal law that would be considered prosecutable. After review, the PIS advised that your complaint did not provide sufficient information to warrant a criminal investigation.

Based on that determination, pursuant to its authority under Executive Order 12993, your complaint was presented to the IC for administrative review. After review, the IC determined that your complaint lacked specific allegations of wrongdoing directly against the Inspector General (IG) or senior member of the IG's staff to rise to a level of consideration by the IC. Your complaint was referred to the IG for appropriate action.

The IC will take no further action concerning this matter and has placed this file in a closed status. Thank you for bringing your complaint to the IC's attention.

Sincerely,

296-HQ-12406-7-9

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

Dep. Dir. \_\_\_\_\_  
ADD Adm. \_\_\_\_\_  
ADD Inv. \_\_\_\_\_  
Asst. Dir.:  
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Crim. Inv. \_\_\_\_\_  
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Off. of EEO \_\_\_\_\_  
Off. Liaison & \_\_\_\_\_  
Int. Affs. \_\_\_\_\_  
Off. of Public Affs. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

MAIL ROOM

APPROVED:

Director \_\_\_\_\_  
Deputy Director \_\_\_\_\_

Crim. Inv. \_\_\_\_\_  
CJIS \_\_\_\_\_  
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Gen. Counsel \_\_\_\_\_  
Info. Res. \_\_\_\_\_  
Inspection \_\_\_\_\_  
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National Sec. \_\_\_\_\_  
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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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12 Pages were not considered for release as they are duplicative of 296-1240657-10

\_\_\_\_\_ Page(s) withheld for the following reason(s): DUPLICATE LETTER EXCEPT  
FOR ADDRESSEE

- ☒ The following number is to be used for reference regarding these pages:

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 28, 1999

Mr. Thomas Pickard  
Chair, Integrity Committee  
President's Council on Integrity  
and Efficiency  
J. Edgar Hoover Building, Room 7016  
Washington, DC 20535

Dear Mr. Pickard:

We have received the enclosed letter from Mr. Michael J. McManus concerning allegations of misconduct against the Department of Housing and Urban Development Inspector General. We are forwarding this letter to you for such action as you deem appropriate.

Thank you for your time and consideration of this matter.

Sincerely,

Robert G. Damus  
General Counsel

Enclosure

cc:



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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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- ☐ Deletions were made pursuant to the exemptions indicated below with no segregable material available for release to you.

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- ☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.

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12 Pages were not considered for release as they are duplicative of 296-1240657-10

\_\_\_\_\_ Page(s) withheld for the following reason(s): Duplicate letter except  
for address

- ☒ The following number is to be used for reference regarding these pages:

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

April 22, 1999

Mr. Thomas J. Pickard  
Assistant Director, Criminal Investigative  
Division  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, N.W  
Washington, D. C. 20535

Dear Mr. Pickard:

The enclosed letter from Michael McManus was received by  
the HHS Inspector General. I am forwarding it to you as  
Chairman of the Integrity Committee of the PCIE.

Sincerely,

M. Elaine Faison  
OIG Executive Secretary

Enclosure

291-152-129-657-12

June 1, 1999

Mr. Michael J. McManus  
Drinker, Biddle & Reath LLP  
1500 K Street, NW, Suite 110  
Washington, D.C. 20005-1209

IC # 212

Dear Mr. McManus:

The purpose of this letter is to notify you of the receipt of your letter, dated April 21, 1999. In your letter, you allege wrongdoing by the Inspector General, Department of Housing and Urban Development.

Pursuant to Executive Order (EO) 12993, the IC is authorized to receive, review, and refer for investigation, where appropriate, allegations of wrongdoing against Inspectors General (IGs) and certain senior members of an IG's staff.

The IC concentrates its efforts on allegations of serious misconduct by an IG or IG senior staff member under the circumstances described in EO 12993. The IC will refer cases to other investigative bodies, close cases, or take other actions consistent with its discretionary powers under EO 12993.

Please be advised that your complaint appears to relate to a previous IC matter, designated by the above file number, which was closed by the IC in May 1998. This case was closed because the complaint lacked specific allegations falling within the IC's purview. Based upon a preliminary review of your complaint, it appears that your allegations do fall within the IC's purview, and the IC has decided to reopen this matter for additional consideration.

1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326  
MCW:mcw (8)

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1. Dir.  
2. Asst. Dir.  
3. Chief of Staff  
4. Dir. of Gen. Counsel  
5. Dir. of Adm. Serv.  
6. Dir. of Inv. & Litig.  
7. Dir. of Int. Affs.  
8. Dir. of Res. & Insp.  
9. Dir. of Tech. Serv.  
10. Dir. of EEOA  
11. Dir. of Public Affs.  
12. Dir. of Cong. & Public Affs.

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Mr. Michael J. McManus

You may contact the IC in writing to learn the status of the review of this matter; however, details of pending investigations cannot be provided. The address for the IC is 935 Pennsylvania Avenue, NW, Room 7373, Washington, D.C., 20535-0001.

Sincerely,

*TJP*

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

**APPROVED:**

*TJP*  
Crim. Inv. \_\_\_\_\_ Inspection \_\_\_\_\_ Training \_\_\_\_\_  
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Finance \_\_\_\_\_ National Sec. \_\_\_\_\_  
Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ OPR \_\_\_\_\_  
Deputy Director \_\_\_\_\_ Info. Res. \_\_\_\_\_ Personnel \_\_\_\_\_ Cong. Affs. \_\_\_\_\_

June 1, 1999

Ms. M. Elaine Faison  
OIG Executive Secretary  
Office of Inspector General  
Department of Health and Human Services  
Washington, D.C. 20201

IC # 212

Dear Ms. Faison:

The purpose of this letter is to notify you of the receipt of your letter, dated April 22, 1999, by which you referred a complaint to the Integrity Committee (IC) for review. The complaint was from Mr. Michael J. McManus who alleged wrongdoing by the Inspector General, Department of Housing and Urban Development.

This complaint has been assigned the above-captioned file number and will be presented to the IC for review. Thank you for bringing this matter to the IC's attention.

Sincerely,

"S"

Thomas J. Pickard  
Chairman

Integrity Committee of the  
President's Council on Integrity and Efficiency

1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326

1 - [REDACTED]  
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1 - [REDACTED]

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29 JUN 1999 14

APPROVED:

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CJS	Laboratory	Off. of EEO
Finance	National Sec.	Affairs
Director	Gen. Counsel	GPR
Deputy Director	Info. Res.	Personnel
		Off. of Public Affs.
		Cong. Affs.

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1 Dir.  
1 Asst. Dir.  
1 JCS  
1 Finance  
1 Dir. Res.  
1 Insp.  
1 Adm.  
1 Asst. Sec.  
1 Personnel  
1 Training  
1 of EEOA  
1 of Public  
1 Cong. Affs.  
1 Director's Office

MAIL ROOM

FBI/DOJ

**FEDERAL BUREAU OF INVESTIGATION**

**Precedence:** ROUTINE

**Date:** 05/20/1999

**To:** ADIC, WFO

**From:** SA [REDACTED]  
C-7/NVRA

**Approved By:** [REDACTED]

**Drafted By:** [REDACTED] *tjt*  
*11*

**Case ID #:** 60A-WF-204920 (Pending)

**Title:** [REDACTED]  
C. Austin Fitts;  
FAG-HUD

**Synopsis:** Meeting with AUSA Dick Chapman and lawyers representing C. Austin Fitts and Hamilton Securities.

**Details:** On this date, the writer, SAC Joe Haban, HUD/OIG/SID, AUSA Dick Chapman, David Smith, Michael McManus and Ken Ryan met at the United States Attorney's Office, WDC. David Smith represents C. Austin Fitts while Michael McManus and Ken Ryan represent Hamilton Securities.

The meeting was called to inform the attorneys that at this time, the Government's investigation into the actions of C. Austin Fitts and Hamilton Securities will not result in their being indicted. They were informed that the Government's civil efforts will go forward. Fitts was the founder and majority stockholder in Hamilton Securities which was the Government's advisor in HUD's note sales program.

David Smith advised that Fitts believes she has done nothing wrong in connection with HUD's note sales and would be available for an interview. Smith was told that any interview of Fitts would have to be coordinated through Tony Alexis, DOJ's civil attorney assigned to the case.

Though Tony Alexis is involved in the Government's civil action against Fitts and Hamilton, it is believed that the writer should be present during any interview of her. [REDACTED]

The only major issue left unresolved at this time is the enforcement of HUD/OIG's administrative subpoenas given to Hamilton. Up to this point, McManus has refused to comply and turn over Hamilton's internal records and communications. But this issue

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*2-13-mrr.4*

To: ADIC, WFO From: SA [REDACTED]  
Re: 60A-WF-204920, 05/20/1999

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should not impact the Bureau's role in the investigation. Since AUSA Chapman and Hayes Gorey of the Antitrust Division have declined in this matter, it is anticipated that after the interview of Fitts and perhaps one or two of her top lieutenants, the Bureau will cease its involvement in this case.

SAC Haban, HUD/OIG and the writer will meet with Tony Alexis on June 02, 1999, to discuss the above case and plan for the interview of Fitts.

♦ ♦

LAW OFFICES

DRINKER BIDDLE & REATH LLP

1345 CHESTNUT STREET  
PHILADELPHIA, PA 19107-3496  
(215) 988-2700

MICHAEL J. MCMANUS  
(202) 842-8830  
MCMANUMJ@DBR.COM

SUITE 1100  
1500 K STREET, N.W.  
WASHINGTON, D.C. 20005-1209  
TELEPHONE: (202) 842-8800  
FAX: (202) 842-8465

SUITE 300  
105 COLLEGE ROAD EAST  
P.O. BOX 627  
PRINCETON, NJ 08542-0627  
(609) 716-6500  
SUITE 300  
1000 WESTLAKES DRIVE  
BERWYN, PA 19312-2409  
(610) 993-2200

June 18, 1999

The Honorable Thomas J. Pickard  
Chairman, Integrity Committee  
President's Council on Integrity  
& Efficiency  
935 Pennsylvania Avenue, N.W.  
Room 7373  
Washington, D.C. 20535-0001

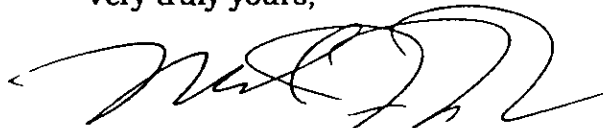
**Re: Inspector General, Department of  
Housing and Urban Development  
IC No. 212**

Dear Mr. Pickard:

Thank you for your June 1<sup>st</sup> letter notifying us about the Integrity Committee's decision to reopen the above matter for additional consideration. Our clients, The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc. (collectively "Hamilton") recently filed a Complaint pursuant to the Freedom of Information Act that elaborates on some of the points raised in our April 21<sup>st</sup> letter. Specifically, the Complaint and the attached affidavit from a former senior OIG auditor cast serious doubt upon the Inspector General's stated reasons for terminating an essentially complete audit of the loan sale program and subsequent refusal to release those records. We believe that these allegations are relevant to the Integrity Committee's investigation.

Please let us know if we can provide any additional information.

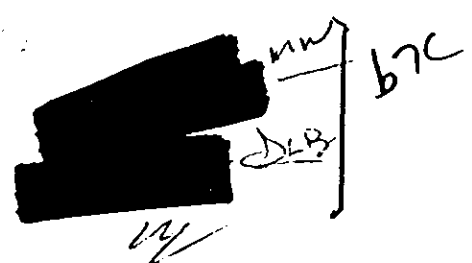
Very truly yours,

  
Michael J. McManus

MJM/gw  
Enclosure

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150<sup>th</sup>  
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1 Pages were not considered for release as they are duplicative of 296-1240657-23

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November 24, 1999

Mr. Michael J. McManus  
Drinker Biddle & Reath LLP  
1500 K Street, NW, Suite 1100  
Washington, D.C. 20005-1209

IC # 212

Dear Mr. McManus:

This is to acknowledge the Integrity Committee's (IC) receipt of your letter, dated November 10, 1999. In your letter, you requested to be advised whether your complaint had been referred by the IC for investigation and, if so, who conducted the investigation. You also provided additional information in support of your complaint for the consideration of the IC.

Please be advised that pursuant to Executive Order 12993, the IC undertook a review of the information you provided to determine if there was a substantial likelihood that the allegations would disclose a violation of any law, rule or regulation, or gross mismanagement, gross waste of funds or abuse of authority. During its review, the IC solicited comment from the Inspector General and conducted a voluminous document examination. The IC determined that the allegations could not be substantiated. As such, the IC found that the allegations did not warrant investigative referral or further action.

Also be advised that based upon a review of your latest submission, no new information is disclosed that would warrant additional action by the IC.

296-HQ-1240657-34

The files of the IC are the property of the Federal Bureau of Investigation (FBI). If you would like to obtain a copy of the IC's file on this matter, you may write to the FBI's Freedom of Information/Privacy Act Section at 935 Pennsylvania Ave., NW, Room 6296, Washington, D.C. 20535-0001.

Dep. Dir. \_\_\_\_\_  
Chief of Staff \_\_\_\_\_  
Off. of Gen. Counsel \_\_\_\_\_  
Asst. Dir.: 1 - Mr. Pickard, Room 7116  
Crim. Inv. 1 - [REDACTED]  
CJIS 1 - [REDACTED] Room 7326  
Finance \_\_\_\_\_  
Info. Res. MCW:mcw (8)  
Insp. \_\_\_\_\_  
Lab. \_\_\_\_\_  
National Sec. \_\_\_\_\_  
Personnel \_\_\_\_\_  
Training \_\_\_\_\_  
Off. of EEOA \_\_\_\_\_  
Off. of Public & Cong. Affs. \_\_\_\_\_  
Director's Office \_\_\_\_\_

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Mr. Michael J. McManus

Thank you for bringing your questions and concerns to the IC's attention.

Sincerely,

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

**APPROVED:**

  
Crim. Inv. \_\_\_\_\_ Info. Res. \_\_\_\_\_ Training \_\_\_\_\_  
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Deputy Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ Personnel \_\_\_\_\_ Cong. Affairs \_\_\_\_\_



IC 212

INTEGRITY COMMITTEE (IC)

MEETING OF 10/18/99

Notes of Program Analyst [REDACTED]

MEETING ATTENDEES

Mr. Thomas J. Pickard, Assistant Director, Criminal Investigative Division, FBI - Chairman

[REDACTED], Supervisory Special Agent (SSA), Governmental Fraud Unit (GFU), FBI [Working Group (WG)]

Ms. Elaine D. Kaplan, Special Counsel, Office of Special Counsel (OSC)

Ms. Kimberly Kessler, Trial Attorney, Public Integrity Section (PIS), U.S. Department of Justice (DOJ)

Ms. Jane Ley, Deputy Director for Government Affairs and Special Projects, Office of Government Ethics (OGE)

Mr. Patrick McFarland, IG, Office of Personnel Management (OPM) (via the telephone)

[REDACTED] SSA, GFU, FBI (WG)

[REDACTED], Office of Management and Budget

Mr. Walter Stachnik, IG, Securities Exchange Commission (SEC)

Mr. Roger Viadero, IG, Department of Agriculture (DOA)

[REDACTED] Program Analyst, GFU, FBI (WG)

I. OPENING INTRODUCTIONS/REMARKS BY CHAIRMAN PICKARD

- The meeting began at approximately 2:00 p.m. Mr. Pickard arranged for IC members to meet with FBI Director Louis Freeh prior to the start of the meeting. Director Freeh commended IC members on their work.

II. NEW CASES

IC #:

Subject:

Complainant:

Date Opened:

ALLEGATION(S)

•

1 - Mr. Pickard, Room 7116

1 - [REDACTED]

1 - [REDACTED] Room 7326

MCW:mcw (22)

1 - [REDACTED]

1 - [REDACTED]

1 - [REDACTED]

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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\_\_\_\_\_ Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date

\_\_\_\_\_ Pages were not considered for release as they are duplicative of \_\_\_\_\_

4 Page(s) withheld for the following reason(s): OUTSIDE SCOPE OF REQUEST

- ☒ The following number is to be used for reference regarding these pages:

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IC #:  
Subject(s):  
Complainant:  
Date Opened:

ALLEGATION(S)

PIS ANALYSIS

IC DISPOSITION

III. PREVIOUS CASES

IC #: ~~242-1296-RQ-12406571~~  
Subject(s): IG Susan Gaffney,  
Department of Housing and Urban Development (HUD)  
Complainant: C. Austin Fitts, Chairman,  
Hamilton Securities Group  
Date Opened: 12/23/97 (Original)  
4/21/99 (Reopened)

### ALLEGATIONS

- The HUD IG has conducted an inappropriate investigation against Hamilton Securities. The investigation was wide-ranging and unfocused.
- The OIG repeatedly leaked proprietary and confidential info about the investigation to the press in an attempt smear, slander, and intimidate.
- IG Gaffney personally intervened in the case to burry an audit relative to the case that would clear Hamilton.

### PIS ANALYSIS

After review, the PIS advised that the complaint does not provide sufficient information to warrant a criminal investigation.

### NARRATIVE

This case was previously presented to the IC at its meetings of 4/13/98 and 8/6/99. At the 4/13/98 meeting, the IC originally determined that the complaint lacked specific allegations against the IG and decided to refer the complaint to the IG for information and close. However, Michael J. McManus, an attorney for Hamilton Securities, subsequently alleged that IG Gaffney personally suppressed an audit relative to the case that would clear Hamilton because of a personal animosity toward Hamilton. This allegation was presented to the IC at its 8/6/99 meeting. The IC decided to contact IG Gaffney for a response. As IG Gaffney has now responded, this matter was again being presented to the IC for review.

### IC DISPOSITION

Closed

It was the opinion of the IC that IG Gaffney's response was sufficient to refute the allegations and that this case should be closed.

0/s  
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IC #:  
Subject:  
Complainant:  
Date Opened:

ALLEGATION(S)

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XXXXXXFEDERAL BUREAU OF INVESTIGATION  
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- ☒ The following number is to be used for reference regarding these pages:

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October 27, 1999

J. Michael McManus, Esq.  
Drinker Biddle and Reath LLP  
1500 K Street, NW, Suite 110  
Washington, D.C. 20005-1209

IC # 212

Dear Mr. McManus:

The purpose of this letter is to advise you that the Integrity Committee (IC) has completed its additional review in the above-captioned matter.

Please be advised that based upon review of the material you submitted as well as information and documentation obtained from the Inspector General, Department of Housing and Urban Development, it was the opinion of the IC that your allegations were not substantiated.

The IC will take no further action concerning this matter and has placed this file in a closed status. Thank you for bringing your concerns to the IC's attention.

Sincerely,

LSI  
Thomas J. Pickard  
Chairman

Integrity Committee of the  
President's Council on Integrity and Efficiency

MAILED 71

OCT 28 1999

FBI

1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326  
MCW:mcw (8)

1 - [REDACTED]  
1 - [REDACTED]  
1 - [REDACTED]

Dep Dir \_\_\_\_\_  
Chief of \_\_\_\_\_  
Staff \_\_\_\_\_  
Off. of Gen. \_\_\_\_\_  
Counsel \_\_\_\_\_  
Asst. Dir. \_\_\_\_\_  
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& Cong. Affs. \_\_\_\_\_

APPROVED:

Director \_\_\_\_\_  
Deputy Director \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Crim. Jus. Info. \_\_\_\_\_  
Sens. \_\_\_\_\_  
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VI. Final Remarks From the IC Chairman

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- The meeting adjourned at approximately 3:50 p.m.

October 27, 1999

Ms. Sylvia Mathews  
Acting Chair  
President's Council on Integrity and Efficiency  
Acting Deputy Director for Management  
Office of Management and Budget  
Old Executive Office Building, Room 350  
Washington, D.C. 20503

IC # 212

Dear Ms. Mathews:

The purpose of this letter is to notify you of the re-closure of the above-captioned Integrity Committee (IC) file. This file was originally opened by the IC in December 1997, upon receipt of a complaint against Inspector General (IG) Susan Gaffney, of the Department of Housing and Urban Development (HUD). The complainant, Ms. C. Austin Fitts, alleged that IG Gaffney conducted an inappropriate investigation of Hamilton Securities, a company owned by Ms. Fitts.

Consistent with longstanding practice, this complaint was initially referred to the Public Integrity Section (PIS) of the Criminal Division, Department of Justice for a determination whether the allegations provided sufficient information to warrant a criminal investigation. After review, the PIS determined that the complaint did not provide sufficient information to warrant a criminal investigation.

Based upon that determination and pursuant to Executive Order 12993, the complaint was presented to the IC for administrative review. In its initial review, the IC originally determined that the complaint lacked specific allegations against IG Gaffney or her senior staff and did not provide significant information to rise to a level of further consideration by the IC. The complaint was referred to IG Gaffney for appropriate handling. You were advised of the closure of this case by letter, dated May 4, 1998.

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Ms. Sylvia Mathews

However, in June 1999, Mr. J. Michael McManus, an attorney for Ms. Fitts, subsequently alleged that IG Gaffney personally suppressed an audit relative to the case that would clear Hamilton because of a personal animosity toward Hamilton. Based upon receipt of this allegation, the IC decided to reopen this case and solicited a response from IG Gaffney to the allegation. Based upon further review of the complaint and IG Gaffney's response, it was the opinion of the IC that IG Gaffney's response was sufficient to refute the allegation.

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b7c [ The IC will take no further action concerning this matter and has placed this file in a closed status. Questions concerning this letter should be directed to Supervisory Special Agent [REDACTED] Program Manager for the IC, at [REDACTED]

Sincerely,


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Thomas J. Pickard  
Chairman

Integrity Committee of the  
President's Council on Integrity and Efficiency

1 - Honorable Susan Gaffney  
Inspector General  
Department of Housing and Urban Development  
451 7th Street, SW, Room 8256  
Washington, D.C. 20410

APPROVED:

  
Crim. Inv. \_\_\_\_\_ Info. Rec. \_\_\_\_\_ Training \_\_\_\_\_  
Crim. Jus. Info. \_\_\_\_\_ Off. of EEO \_\_\_\_\_  
Sens. \_\_\_\_\_  
Director \_\_\_\_\_ Finance \_\_\_\_\_  
Deputy Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ Cong. Affairs \_\_\_\_\_



U.S. Department of Housing and Urban Development  
**Office of Inspector General**  
451 7th St., S.W.  
Washington, D.C. 20410

September 22, 1999

**Via Messenger**

Thomas J. Pickard, Chairman  
Integrity Committee  
President's Council on Integrity and Efficiency  
935 Pennsylvania Avenue, N.W.  
Room 7373  
Washington, D.C. 20535-0001

Re: IC # 212

Dear Mr. Pickard:

Thank you for affording me the opportunity to respond to the numerous, inaccurate allegations made against me and the Office of Inspector General ("OIG") by The Hamilton Securities Group, Inc. ("Hamilton"), its principal, C. Austin Fitts, and one of its attorneys, Michael J. McManus. These allegations were included in letters addressed to the Integrity Committee and dated December 23, 1997, January 30, 1998, April 21, 1999, and June 30, 1999. Based upon the records that you forwarded to me on August 23, 1999, it appears that on April 13, 1998, the Integrity Committee determined that the allegations contained in Hamilton's December 23, 1997, and January 30, 1998 letters did not warrant review/action by the Integrity Committee. Nevertheless, in order to place this matter in the proper perspective, I think that it is important to respond to some of the allegations contained in the first two letters and to provide you with background concerning OIG's investigative activities that affect Hamilton, as well as to respond to Hamilton's most recent assertions.

1. Background

A. The Mortgage Sales Program

Among other things, the Federal Housing Administration ("FHA") of the United States Department of Housing and Urban Development ("HUD") insures residential mortgages. FHA's residential mortgage insurance programs are among HUD's largest programs, and are designed to increase the supply of

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[Redacted signature block with handwritten initials]

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 2

affordable housing for low- and moderate-income families. Generally, under FHA's insurance programs, when individual homeowners (commonly referred to as "single family" mortgagors) or owners of apartment projects (commonly referred to as "multifamily" mortgagors) default on mortgages insured by FHA, FHA pays the mortgagee the unpaid principal balance of the mortgage and takes an assignment of the mortgage.

At the commencement of FHA's Mortgage Note Sales Program in 1993, HUD held single family and multifamily mortgage notes with unpaid principal balances totaling in excess of \$11 billion. In response to this ever increasing inventory of formerly HUD-insured mortgages, HUD implemented the Mortgage Note Sales Program. Hamilton served as HUD's exclusive financial advisor in the Mortgage Note Sales Program from the award of the initial financial advisor contract in September 1993 through December 1995, and as one of four financial advisors from January 1996 until October 1997.

The lead HUD program official on HUD's Mortgage Note Sales Program between June 1993 and October 1996 was Helen Dunlap. Ms. Dunlap was appointed as the Deputy Assistant Secretary for Multifamily Housing Programs in June 1993, and later was reassigned as FHA's Deputy Assistant Secretary for Operations. Ms. Dunlap served as a procurement official on Hamilton's financial advisor contracts with HUD.

B. Complaints Alleging Improprieties Within HUD's Mortgage Note Sales Program

On June 5, 1996, Ervin & Associates, Inc., filed a 253-page civil complaint in United States District Court for the District of Columbia, Ervin and Associates, Inc. v. Helen Dunlap, U.S. Department of Housing and Urban Development, et al., Civil Action No. 96-1253, alleging violations of Ervin's constitutional and statutory rights, and seeking preliminary and permanent injunctive relief, a declaratory judgment, and damages ("Bivens action"). Ms. Dunlap was sued in her individual capacity.

The complaint alleged corruption and favoritism in the procurement of services associated with HUD's Mortgage Note Sales Program. The complaint also alleged that HUD, through Ms. Dunlap and its financial advisor, Hamilton, used Hamilton's control over the note sales process to embark on a complex scheme to deliver huge blocks of discounted multifamily and single family HUD-owned mortgage notes to a "tag team" of two prominent Wall Street firms, Goldman, Sachs & Co. and BlackRock Capital Finance L.P. It was also alleged that this was accomplished through disclosure of material, inside information to select bidders, manipulation of the optimization computer program used to select winning bidders, and provision of misinformation to other bidders.

On June 6, 1996, a *qui tam* complaint pursuant to section 3730 of the False Claims Act ("FCA"), 31 U.S.C. §§ 3730-3733, was filed under seal in United States District Court for the District of Columbia, Civil Action No. 96-1258 ("*qui tam* action" or "*qui tam* complaint"). Hamilton was among the named defendants in the *qui tam* complaint.

C. OIG's Investigation of Allegations Contained in the Bivens Action and Qui Tam Action

During the first week of July 1996, the Civil Division of the United States Attorney's Office for the District of Columbia contacted the OIG, advised OIG of the existence of the *qui tam* action, and requested the OIG's assistance in investigating the allegations in it. Thereafter, the OIG commenced an investigation of the allegations contained in both the Bivens action and the *qui tam* action. In August 1996, shortly after the OIG investigation began, the Civil Division of the United States Attorney's Office sought the involvement of the Criminal Division of that Office in the investigation. Since that time, the OIG has been conducting its investigation in consultation with both of those divisions.

During the three years that followed the commencement of the investigation, the OIG, in coordination with the United States Attorney's Office and other law enforcement agencies, has conducted an extensive investigation to explore the many, complex allegations in both the Bivens and *qui tam* actions, as

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 4

well as many related allegations that arose in the course of the investigation. These allegations concern the actions not only of Hamilton and HUD employees, but of numerous other entities and individuals.

To further the investigation, the OIG issued administrative subpoenas *duces tecum* to Hamilton on August 6, 1996, August 22, 1996, and October 24, 1997. Identical subpoenas were issued on each of these three dates to The Hamilton Securities Group, Inc., and Hamilton Securities Advisory Services, Inc., the two Hamilton corporate entities with which FHA had contracted. The subpoenas of August 6 and 22, 1996, were subsequently modified in numerous respects in response to requests by Hamilton to more narrowly define the categories of records sought.

Hamilton did not fully comply with the six subpoenas, as modified, and the OIG filed Susan Gaffney v. The Hamilton Securities Group, Inc., et al., Civil Action No 98-92 (D.D.C.), seeking an order enforcing the subpoenas. On December 18, 1998, the United States Court for the District of Columbia issued an order enforcing the six administrative subpoenas that OIG had issued to Hamilton. On February 18, 1999, Hamilton appealed that order to the Court of Appeals for the District of Columbia Circuit. The Court of Appeals summarily affirmed the enforcement order on July 2, 1999.<sup>1</sup>

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<sup>1</sup> Since the issuance of the December 18, 1998 order enforcing the subpoenas, co-Special Masters, Irving M. Pollack and Laurence Storch, have monitored the production of records called for by OIG's subpoenas. On May 7, 1999, Hamilton filed with the district court an exception to the co-Special Masters' rejection of claims of attorney-client privilege with respect to 17 documents that are responsive to the administrative subpoenas. The district court held a hearing on the matter on June 17, 1999, and took it under advisement. Later, the district court ordered Hamilton to produce testimony from the law firm of Holland & Knight concerning Hamilton's privilege claims. Hamilton has yet to comply. Additionally, the co-Special Masters, OIG and Hamilton have cooperated regarding the development of a contract statement of work for the duplication and cataloguing of approximately 20 back-up tapes that Hamilton made of its computer network. Once the tapes are duplicated, the enforcement order authorizes OIG to designate tapes that Hamilton must review for responsive and privileged materials. The co-Special Masters will then rule on privilege claims and provide to the OIG access to non-privileged, responsive records included on the designated back-up tapes.

During the pendency of the investigation, Hamilton filed three lawsuits against HUD and/or the OIG: 1) a complaint for declaratory, injunctive, and other relief, which among other things sought an order requiring HUD to make certain contract payments, quashing OIG's subpoenas, and enjoining alleged statements to the media by OIG (The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.)); 2) a claim for payment under Hamilton's financial advisory contract (The Hamilton Securities Group, Inc., et al. v. United States, Case No. 98-169 (Ct. Fed. Cl.)); and 3) a complaint for judicial review of OIG's denial of a Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, request (The Hamilton Securities Group, Inc. v. United States Department of Housing and Urban Development, Civil Action No. 99-1563 (D.D.C.)). The declaratory judgment case was dismissed, and the contract and FOIA cases are pending.

2. The December 23, 1997 Allegations

By letter dated December 23, 1997, Ms. Fitts, on behalf of Hamilton, filed with the Integrity Committee "a formal complaint under Executive Order 12993, Section 1(a), for gross unprofessional conduct by the Inspector General (the "IG") of the U.S. Department of Housing and Urban Development against Hamilton." Specifically, Hamilton alleged that: 1) OIG has conducted a wide-ranging investigation that has not resulted in "findings of wrongdoing"; 2) OIG has leaked proprietary and confidential information to the media; 3) other Federal agencies have begun to investigate, audit or review Hamilton's activities; and 4) OIG has suppressed an audit report favorable to Hamilton.<sup>2</sup>

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<sup>2</sup> Hamilton also made a series of allegations concerning the financial impact that OIG's investigation of HUD's Mortgage Note Sales Program has had upon Hamilton.

A. Hamilton Is Primarily Responsible for the Duration of OIG's Investigation of HUD's Mortgage Note Sales Program

As discussed above, the OIG has conducted an extensive investigation in an effort to explore methodically the many, complex allegations in both the Bivens action and *qui tam* complaint, as well as many related allegations that arose in the course of the investigation. Many of these allegations concern the actions of Hamilton. The investigation is aimed at finding the truth in these matters, thereby either refuting the allegations and putting them to rest, or developing evidence for potential administrative, civil, and/or criminal actions and remedies that the United States might pursue. Hamilton needs to understand that it is primarily responsible for the duration of the investigation. Hamilton's failure to comply with the OIG's subpoenas has been a major factor contributing to the duration of the investigation.

B. OIG Has Not Leaked Information to the Media

Regarding alleged leaks to the media, Hamilton alleged leaks by the OIG to the *U.S. News & World Report* in 1996 and to *The Washington Times* in 1997. Hamilton alleged the same leaks in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.), which was dismissed. The OIG and I did not leak to *U.S. News & World Report*, *The Washington Times*, or other media outlets information concerning Hamilton. With respect to the purported leak to *U.S. News & World Report*, Hamilton alleged that: 1) a high-level official within the OIG indicated that Hamilton is guilty of criminal misconduct; and 2) confidential information that Hamilton provided to HUD in connection with a contract bid process was disclosed to the *U.S. News & World Report*, and was published on November 11, 1996. Hamilton's first allegation is hearsay that is refuted by the facts, and Hamilton's second allegation is not supported by the facts. In contrast to Hamilton's hearsay recollection of what a *U.S. News & World Report* reporter allegedly told Hamilton, the November 11, 1996 article referred to by Hamilton in its second allegation states that "[p]eople close to the matter say no conclusions

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 7

have been reached about whether laws were violated" and that "Inspector General Susan Gaffney declined to discuss her inquiry." Attachment 1.

Regarding Hamilton's second allegation, there is nothing in the article that suggests that anyone in OIG disclosed Hamilton's confidential or proprietary information. The November 11, 1996 article states:

*In a confidential document submitted to HUD three years ago, the company said: "A good financial advisor can take advantage of Wall Street's desire to get a competitive advantage." The document, obtained by U.S. News, further explained Hamilton's philosophy . . .*

Id. According to the article, the purported confidential or proprietary information that Hamilton asserts must have been disclosed by OIG, had been in HUD's files, not OIG's, for three years. Id. During that three years innumerable persons, including Hamilton's employees, likely would have had access to the document. Further, unlike other documents and interviews referenced in the article, which are identified as to source, the article does not identify the source of the "confidential document".

With respect to the purported leak to *The Washington Times*, Hamilton alleges that information was published concerning certain OIG subpoenas before OIG served them. However, contrary to Hamilton's assertion, the October 24, 1997 article in *The Washington Times* does not even refer to OIG subpoenas. In relevant part, the article states:

*The Department of Housing and Urban Development has ordered a fired financial advisory firm to turn over bids and sale records for multibillion-dollar mortgage auctions being probed for bid-rigging.*

Attachment 2. The article identifies HUD, as opposed to OIG, as the party requesting records. Id. Indeed, OIG is not mentioned in the article until much later, and the article does not mention a subpoena. Id. Further, on



October 17, 1997, HUD terminated a contract with Hamilton and requested that Hamilton provide to HUD certain records associated with the contract.<sup>3</sup> Attachment 3.

C. OIG Has No Involvement in Investigations of Hamilton by Other Federal Agencies

Regarding the investigations of Hamilton by other federal agencies, Hamilton alleges that the Internal Revenue Service commenced an audit of Hamilton's employee benefits plans and that the Federal Deposit Insurance Corporation commenced an audit of one of Hamilton's creditors. OIG did not request or recommend either audit, has not been consulted concerning the audits, and is not aware of the status or findings of either exercise.

D. OIG's Audit of HUD's Mortgage Note Sales Program Was Properly Suspended at the Commencement of the Investigation

With respect to the favorable audit report that OIG allegedly "suppressed", on or about September 5, 1995, pursuant to a recommendation from a staff auditor to include an audit of HUD's Mortgage Note Sales Program in OIG's annual audit plan because of the size and potential impact of the sales, the Rocky Mountain District Office of Audit, which is based in Denver, Colorado, commenced an audit of the loan sales. Staff working in OIG's Rocky Mountain District Office of Audit conducted but did not complete audit field work, and prepared several drafts of a portion of the audit report. In the latter regard, the draft audit report dealt exclusively with credit reform issues.

Pursuant to section 6.33 of the Government Auditing Standards, the audit was suspended soon after the OIG began its investigation of HUD's Mortgage Note Sales Program in July of 1996. Further, at the time that the audit was suspended, there was considerable audit work left to be completed. Later, OIG

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<sup>3</sup> HUD terminated Hamilton after HUD's Office of Procurement and Contracts ("OPC") learned that Hamilton's optimization model had caused HUD to lose approximately \$3.9 million in three loan sales. Attachment 4.

assigned a Senior Auditor to review and critique the partial, draft audit report and its supporting working papers. On March 18, 1998, the Senior Auditor issued his report, which concluded: "Overall, I'm not convinced that sufficient audit work was performed to draw reliable conclusions about the objectives that were set for this review." Attachment 5. In reaching his conclusion, the Senior Auditor evaluated the Rocky Mountain Office Audit Team's ("RMOAT") audit objectives, audit scope, audit verification work, reporting, working paper preparation, and compliance with the Government Auditing Standards. With respect to audit objectives, the Senior Auditor determined that the RMOAT did not complete, or in some cases start, the five audit objectives that they had devised. As to the one audit objective that was discussed in the partial, draft audit report, the Senior Auditor stated:

*Another key objective was to evaluate methodologies used to calculate the credit reform value [of HUD's note sales] and to estimate the loan proceeds of each sale. While HUD placed substantial reliance on optimization and credit reform models in making decisions regarding mortgage sales, there is no evidence in the working papers to indicate that there was any evaluation of the methodologies used in establishing the models, the manner in which the models were used by HUD's third party contractors, or how their use was monitored by HUD. Some HUD staff expressed concern when they were interviewed that the optimization model may have favored large bidders, that HUD provided little contractor oversight, and that there was no independent audit of what the contractors were doing.*

Id. In other words, the Senior Auditor determined that although the RMOAT had received specific allegations regarding the optimization model used by HUD's contractor, Hamilton,<sup>4</sup> and about HUD's lack of oversight of its

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<sup>4</sup> Indeed, it should be noted that Ervin & Associates, Inc., alleged that Hamilton was using its optimization model to direct blocks of loans to large bidders.

contractors, the RMOAT apparently disregarded these allegations and went ahead and drafted proposed audit findings relating to credit reform.

Regarding the RMOAT's audit scope, the Senior Auditor determined that it was "too broad to be adequately covered in a reasonable period of time." Id. Further, the Senior Auditor determined that the RMOAT's audit verification work "was more perfunctory than substantive." Id. To say it another way, the RMOAT failed to adequately test or question information that it was provided by HUD staff and contractors. The Senior Auditor attributed this to a statement by the RMOAT's supervisor, at or about the commencement of field work, to the effect "that the review was a collaborative effort with the program offices and that [the RMOAT] should focus on the positive things being done by the Department in their report." Id. With respect to reporting, the Senior Auditor stated that the RMOAT's working papers "do not show sufficient work was performed to support" the proposed findings in the partial, draft audit report, and that, indeed, some of the proposed findings conflict with audit work completed by the OIG. Id. Moreover, the Senior Auditor noted that there was no evidence that the District Inspector General for Audit reviewed the working papers.

Finally, regarding the Government Auditing Standards, the Senior Auditor questioned whether the RMOAT satisfied several standards relating to field work and reporting for performance audits.<sup>5</sup> Id. Specifically, the Senior Auditor questioned whether the RMOAT's audit work was adequately planned to achieve the audit objectives and sufficiently supervised, whether the RMOAT gained an adequate understanding of HUD's Mortgage Note Sales Program and credit reform, whether the RMOAT's proposed findings were supported by sufficient (or any) evidence, and whether the RMOAT communicated with their supervisory staff concerning areas where additional audit work was needed. Id.; see also GAO, Government Auditing Standards at §§ 6.3, 6.23, 6.39, 6.46, and 7.55. Accordingly, for these and other reasons, such as the amount of time that has elapsed since audit work was suspended, the OIG has determined that no

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<sup>5</sup> The field work and reporting standards for performance audits are found at chapters 6 and 7, respectively, of GAO, Government Auditing Standards (Rev. 1994).

final audit report concerning HUD's Mortgage Note Sales Program can be issued unless additional, substantial audit work is performed.

3. The January 30, 1998 Allegations

By letter dated January 30, 1998, Ms. Fitts, on behalf of Hamilton, amended her December 23, 1997 complaint to include the pleadings filed by Hamilton in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.), which was dismissed.<sup>6</sup> In addition to each of the allegations contained in the December 23, 1997 complaint, which are responded to above, Hamilton's pleadings in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.) include allegations that: (1) OIG issued to Hamilton overbroad and duplicative subpoenas; and (2) OIG improperly delayed a close-out audit of HUD Contract No. 18161.

A. The Subpoenas Issued to Hamilton Were Proper and Enforceable

With regard to the six subpoenas that OIG issued to Hamilton, it is well settled that the burden of showing that a subpoena is too broad is on the subpoenaed party. See United States v. Powell, 379 U.S. 48, 58 (1964); Federal Trade Comm'n v. Texaco, Inc., 555 F.2d 862, 882 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977). Further, where the agency inquiry "is authorized by law and the materials sought are relevant to the inquiry, that burden is not easily met," SEC v. Brigadoon Scotch Distributing Co., 480 F.2d 1047, 1056 (2d Cir. 1973), cert. denied, 415 U.S. 915 (1974), and "[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the

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<sup>6</sup> Ms. Fitts also included a letter to Judith Hetherton, Counsel to the Inspector General, from David A. Handzo, attorney for Hamilton, dated January 6, 1998, which responded to Ms. Hetherton's request for facts concerning Hamilton's allegations that the OIG was leaking to the media information concerning Hamilton. Mr. Handzo made the same assertions that Hamilton made in its December 23, 1997 complaint, which are responded to above at section 2(B).

agency's legitimate inquiry and the public interest." Texaco, Inc., 555 F.2d at 882; see also Adams v. Federal Trade Comm'n, 206 F.2d 861, 867 (8th Cir. 1961) ("broadness alone is not sufficient justification to refuse enforcement of a subpoena so long as the material sought is relevant"). Hamilton did not carry its burden in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.), which was dismissed, or in Susan Gaffney v. The Hamilton Securities Group, Inc., et al., Civil Action No 98-92 (D.D.C.), where the district court enforced the six subpoenas on December 18, 1998.

B. The OIG Properly Delayed the Close-out Audit of HUD of Contract No. 18161

In its pleadings, Hamilton stated OIG "improperly delayed the routine cost audit" of HUD Contract No. 18161, and that "[a]ccording to HUD's IG, the close-out audit is being delayed pending completion of the IG investigation." OIG admits that it delayed the close-out audit pending the completion of the investigation; however, such delay was necessary and proper.

Pursuant to HUD's procedures, OPC submitted a request to OIG for a close-out audit of HUD Contract No. 18161. On October 30, 1997, OIG, pursuant to a Memorandum of Understanding ("MOU") with the Defense Contracting Audit Agency ("DCAA"), requested that DCAA perform the close-out audit. At the time of the request, the OIG official that made the request was not aware that HUD Contract No. 18161 was pertinent to any on-going OIG investigation.<sup>7</sup> OIG representatives familiar with OIG's investigation of HUD's Mortgage Note Sales Program learned of the referral to DCAA, and OIG withdrew its close-out audit request on November 19, 1997.

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<sup>7</sup> HUD Contract No. 18161 was one of two contracts under which Hamilton served as a financial advisor in HUD's Mortgage Note Sales Program.

DCAA could not have professionally conducted the close-out audit of HUD Contract No. 18161 under the Government Auditing Standards,<sup>8</sup> prior to the completion of OIG's investigation and the report thereof. Further, the OIG was concerned that DCAA's performance of a close-out audit simultaneous with the OIG investigation would be viewed as an improper effort by the OIG to obtain information concerning Hamilton under the guise of a routine cost audit. With regard to auditing standards, section 4.12 of the Government Auditing Standards requires DCAA to design audits steps to detect irregularities, material misstatements, and illegal acts, and section 5.18 requires DCAA to report the same. Knowing DCAA's responsibilities under the Government Auditing Standards, OIG was faced with the Hobson's Choice of disclosing details of the OIG investigation to DCAA and accepting a qualified audit report from them, or delaying the close-out audit until after the completion of the investigation and the report thereof.<sup>9</sup> Neither alternative permitted the completion of the cost audit prior to the completion of the investigation. While DCAA could have satisfied the reporting standard of the Government Auditing Standards by noting OIG's investigation and indicating that its findings were subject to the report of the investigation, such a qualification would have had the practical effect of delaying the completion of the close-out audit until the completion of the investigation. Thus, OIG decided to delay the close-out audit, in order to avoid questions concerning parallel proceedings by OIG and DCAA.

With regard to parallel OIG and DCAA inquiries, Hamilton in its December 23, 1997 letter, and in its pleadings in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.), demonstrated its propensity to presume that audits of Hamilton—or its creditors—by other federal agencies are nothing more than shams by OIG to harass it.

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<sup>8</sup> Pursuant to section 4(a)(3) of the MOU, DCAA is required to comply with the Government Auditing Standards.

<sup>9</sup> Additionally, as stated above, section 6.33 of the Government Auditing Standards gave DCAA the discretion to withdraw from the engagement until OIG completed its investigation.

4. The April 21, 1999 Allegations

By letter dated April 21, 1999, Mr. McManus, on behalf of Hamilton, questioned OIG's investigation of HUD's Mortgage Note Sales upon the grounds that: 1) the investigation "has taken entirely too long"; 2) the subpoenas issued by OIG "are unusually broad for this type of investigation, and have gone well beyond the bounds of anything necessary to obtain relevant information"; and 3) the "investigation is not being done consistent with procedures and practices normally seen in similar types of investigations." Six days earlier Mr. McManus sent a virtually identical letter to Daniel F. Van Horn. Attachment 6. Mr. Van Horn is the Assistant United States Attorney who represented the OIG in The Hamilton Securities Group, Inc., et al. v. United States Department of Housing and Urban Development, et al., Civil Action No. 98-36 (D.D.C.), and Susan Gaffney v. The Hamilton Securities Group, Inc., et al., Civil Action No 98-92 (D.D.C.).<sup>10</sup> The Civil Division of the United States Attorney's Office has advised us that they are preparing a response to Mr. McManus' letter to Mr. Van Horn, and we will provide you with a copy upon our receiving the same.

Above, I responded to Hamilton's allegations that OIG's investigation of HUD's Mortgage Note Sale's Program has taken too long and OIG's subpoenas are too broad. With respect to Hamilton's allegation that OIG's investigation of HUD's Mortgage Note Sale's Program is somehow inconsistent with the procedures and practices Mr. McManus has observed in "similar types of investigations," Mr. McManus provided no details about the "similar" investigations in which he has been involved so it is not possible for me to address that aspect of his claim. Nevertheless, I am not aware of any irregularities or improprieties in the conduct of OIG's investigation, and Hamilton has not presented any convincing evidence that such have occurred. Moreover, in conducting the investigation, the OIG has worked hand-in-glove

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<sup>10</sup> Mr. Van Horn also represented the OIG in C. Austin Fitts v. U.S. Department of Housing and Urban Development, Misc. No. 98-262, and C. Austin Fitts v. U.S. Department of Housing and Urban Development, Misc. No. 98-347, which were unsuccessful efforts by Ms. Fitts, under the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401 *et seq.*, to quash two OIG subpoenas seeking Ms. Fitts' personal financial records.

with the Criminal and Civil Divisions of the Office of the United States Attorney for the District of Columbia, as well as other law enforcement agencies, and none of these organizations has indicated that the procedures and practices employed in the investigation are inconsistent with those normally seen in similar types of investigations.

In support of Hamilton's allegation, Mr. McManus identified a series of purported irregularities, and, without setting forth facts to support his conclusions, speculated concerning the motivations of various parties and accused certain parties of wrongdoing. Without facts, it is nearly impossible, and clearly unfair for me to address each of Mr. McManus' charges; however, I shall attempt to address the "irregularities" that he identified.<sup>11</sup> First, Mr. McManus identifies as an irregularity the involvement in the investigation of OIG's Counsel, Ms. Hetherton. Mr. McManus asserted that Ms. Hetherton's involvement in this matter "far exceeds any statutory authority she may have as counsel to the Inspector General," but he did not specify exactly what statute he believes has been violated. Nothing of which I am aware, however, even remotely suggests that Ms. Hetherton acted in a manner that is improper or inconsistent with her role as a member of the senior staff of the OIG. Further, due to the breadth of the issues involved, OIG's investigative team originally included personnel from each of OIG's principal offices—the Office of Investigation, the Office of Audit, the Office of Management and Policy, and the Office of Counsel, and given the interdisciplinary nature of this effort, it appeared logical that the Counsel to the Inspector General would have a major role in the effort. In any event, since May 1997, the investigation has been directed by the OIG's Office of Investigation.<sup>12</sup>

Next, Mr. McManus alleged that Hamilton has repeatedly requested information concerning "the nature, focus, intent and purpose of" OIG's investigation of HUD's Mortgage Note Sales Program. Although it is true that

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<sup>11</sup> To the extent that you deem it necessary that I respond to each and every specious allegation that Mr. McManus has made, I reserve the right to supplement my response.

<sup>12</sup> OIG does not normally divulge the identity of the personnel staffing an investigation.



the OIG has not formally advised Hamilton of the precise details of its investigation, I am not aware of any requirement to do so. Indeed, disclosure of such information could result in the obstruction of the activities of investigators, destruction of evidence, and/or witness tampering. Nonetheless, I am compelled to state that Hamilton's campaign of opposing the OIG's investigation at every level, has caused the OIG, in litigation, before Congress, and here, to disclose more than it would otherwise have desired.

Mr. McManus also rehashed allegations to the effect that OIG has leaked information to the media and that the OIG improperly suppressed the RMOAT's audit of HUD's Mortgage Note Sales Program. I responded to these allegations above.

Next, Mr. McManus alleged that the OIG and Ervin & Associates, Inc., cooperated in some sort of unholy alliance to end HUD's Mortgage Note Sales Program, and that money saved from the conclusion of HUD's Mortgage Note Sales Program was transferred to OIG. Neither allegation is true or supported by any evidence. As stated above, Ervin & Associates, Inc., made allegations in a Bivens action and a *qui tam* complaint, the Civil Division of the United States Attorney's Office advised OIG of the existence of the *qui tam* action and requested the OIG's assistance in investigating the allegations in it, and, thereafter, the OIG commenced an investigation of the allegations contained in both the Bivens action and the *qui tam* action. OIG has no connection to Ervin & Associates, Inc., other than that the OIG is investigating allegations made by it.

With regard to the transfer of funds to OIG, Mr. McManus' allegation is incorrect and is either knowingly so or arises from a lack of understanding of fiscal law generally and HUD appropriations in particular. Transfers of federal funds are unlawful, unless they are specifically authorized by statute. See 31 U.S.C. § 1532.

*The basic rule with respect to transfer is simple: Transfer is prohibited without statutory authority. The rule applies equally to (1) transfers from one agency to another, (2) transfers from one*

*account to another within the same agency, and (3) transfers to an interagency or intraagency working fund. In each instance, statutory authority is required. An agency's erroneous characterization of a proposed transfer as a "reprogramming" is irrelevant.* /

See GAO, Principles of Federal Appropriations Law, Vol. 1, Ch. 2, ¶ B(3)(a) (July 1991) (footnotes and citations omitted). Congress, as part of HUD's annual appropriation, authorizes annual transfers of funds from FHA, which administered HUD's Mortgage Note Sales Program, to OIG's salaries and expenses account. These authorized transfers long preceded HUD's decision to suspend its Mortgage Note Sales Program, OIG has no control over the transfers, the transfers have grown along with OIG's budget as Congress assigned additional initiatives to OIG, and they are the only transfers between FHA and OIG that occurred.

Finally, Mr. McManus made an allegation that he knows has been repeatedly rejected by the courts. Mr. McManus stated:

*The question arises then, is the OIG conducting this investigation in an attempt to collect information and evidence relating to allegations in the qui tam action? If that is the case, we believe that is patently illegal, and we are entitled at this point to know exactly who authorized this investigation, and under what authority.*

In Susan Gaffney v. The Hamilton Securities Group, Inc., et al., Civil Action No 98-92 (D.D.C.), in connection with Hamilton's effort to obtain discovery, Hamilton argued that: (1) "discovery may be necessary to demonstrate that the OIG lacked statutory authority to issue the subpoenas due to an illegal delegation of power"; (2) "discovery may be necessary to demonstrate that the OIG is acting without statutory authority in lending its subpoena authority to the Department of Justice"; (3) "discovery may be necessary to demonstrate that the OIG is abusing this Court's process by attempting to circumvent its criminal

discovery restrictions.” The District Court did not grant Hamilton’s discovery request.

Later, on December 1, 1998, Hamilton filed its Second Supplemental Opposition to Petition for Summary Enforcement, which explained the issues that it alluded to in its effort to obtain discovery. Hamilton argued that the OIG cannot issue subpoenas in connection with an investigation of potential violations of the FCA because the FCA provides for the issuance of Civil Investigative Demands (“CIDs”), which can only be issued by the Attorney General. Hamilton concluded that, since Congress created the CID in the FCA, it must have intended that only CIDs would be used to investigate potential violations of the FCA, and OIG’s issuance of subpoenas in connection with its investigation of allegations included in the *qui tam* complaint is thus illegal.

A status call was convened on December 3, 1998. During the status call, the parties presented their respective positions concerning Hamilton’s argument that the OIG cannot issue subpoenas in connection with an investigation of possible violations of the FCA. At the conclusion of such presentations, the district court requested proposed orders enforcing the OIG’s six subpoenas. Lest its rejection of Hamilton’s argument be misunderstood, in response to a statement by Hamilton’s attorney that under the FCA “the Attorney General can’t ask the OIG or FBI or anyone else” to provide investigative assistance, the district court stated, “That is going to have to be something that somebody else is going to decide. What is the next argument?”

In spite of the district court’s unambiguous rejection on the merits of Hamilton’s argument that the OIG cannot issue subpoenas in connection with an investigation of possible violations of the FCA, on December 9, 1998, Hamilton filed Respondents’ Motion to Quash Subpoenae or, in the Alternative, Motion for a Protective Order, which again raised the issue that the district court had twice rejected. The OIG moved to strike Hamilton’s motion to quash, and the district court struck from the record Hamilton’s motion “on the ground that said motion is redundant, the Court having previously considered and found to be without merit the argument Respondents seek to raise therein.” Thus, prior to April 21,

1999, the district court three times heard and rejected the allegation Mr. McManus now repeats before this forum.<sup>13</sup>

On December 18, 1998, the district court issued an order enforcing the OIG's six subpoenas, and Hamilton appealed to the Court of Appeals for the District of Columbia Circuit. Hamilton defined its issue on appeal as follows:

*Whether the district court erred when it concluded that certain administrative subpoenas issued to appellants . . . for the express purpose of assisting the Attorney General in its investigation of a qui tam suit were enforceable where (1) the Attorney General lacked statutory authority to delegate its duty to investigate qui tam suits and (2) the OIG lacked statutory authority to use its subpoena power to investigate qui tam suits on the Attorney General's behalf.*

Rejecting Hamilton's argument a fourth time, the Court of Appeals summarily affirmed the decision of the district court on July 2, 1999. Attachment 7.

#### 5. The June 30, 1999 Allegations

By letter dated June 30, 1999, Mr. McManus, on behalf of Hamilton, alleged that "the OIG has improperly withheld exculpatory information from Hamilton." In support of this allegation, Mr. McManus submitted pleadings filed by Hamilton in The Hamilton Securities Group, Inc. v. United States Department of Housing and Urban Development, Civil Action No. 99-1563 (D.D.C.), in which Hamilton is seeking judicial review of OIG's denial of a FOIA request.

On July 13, 1998, Mr. McManus submitted to Ms. Hetherton a letter that stated:

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<sup>13</sup> Hamilton, which claimed to be insolvent in its January 30, 1998 letter, complained in its April 21, 1999 letter that it had expended \$2 million responding to OIG's subpoenas.

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 20

*During our meeting last week, I again asked you whether or not you would produce a copy of the Denver audit of Hamilton, and you responded by asking that I put that request in writing. I am now doing so. Please provide me with a copy of the Denver audit.*

Pursuant to OIG practice, Ms. Hetherton forwarded Mr. McManus' request to the OIG FOIA Officer.

The OIG FOIA Officer by letter responded to Mr. McManus' request on July 20, 1998. The OIG FOIA Officer advised Mr. McManus that the OIG did not possess or control "a copy of the Denver audit of Hamilton," and that the OIG has not conducted such an audit. The OIG FOIA Officer added, however, that the OIG would construe Mr. McManus' FOIA request to be a request for a copy of the partial, draft audit report of HUD's Mortgage Note Sales Program. The OIG FOIA Officer further explained to Mr. McManus that an audit of HUD's Mortgage Note Sales Program was commenced but not completed by OIG's Rocky Mountain District Office of Audit, and that documents compiled or created in connection with the audit had been incorporated into the law enforcement investigative files associated with OIG's investigation of HUD's Mortgage Note Sales Program. The OIG FOIA Officer then denied Mr. McManus' request for records, as follows:

*Accordingly, the draft audit report, which pertains to only a part of the audit, is being withheld under 5 U.S.C. §§ 552(b)(5) and (b)(7)(A). These provisions protect intra-agency communications subject to the deliberative process privilege, records subject to the law enforcement investigative files privilege, and records or information compiled for law enforcement purposes, which if released could reasonably be expected to interfere with a pending or prospective law enforcement proceeding.*

Finally, the OIG FOIA Officer advised Mr. McManus that, pursuant to 24 C.F.R. § 2002.25, he could seek administrative review by me of the denial of his

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 21

FOIA request "if a written appeal is filed within 30 days from the date of this letter."

Thirty-one (31) days later, by a letter dated August 20, 1998, Mr. McManus, on behalf of "Hamilton Securities, Inc.," appealed the denial of his FOIA request. His appeal challenged the OIG's assertion of FOIA exemptions (b)(7)(A) and (b)(5) to the extent that it related to the deliberative process privilege. As to the former exemption, Mr. McManus stated that OIG should not have withheld the subject partial, draft audit report under (b)(7)(A) because "the audit of the [HUD] loan sale program was not conducted in furtherance of any law enforcement proceeding, but rather was a regularly scheduled accounting activity." With respect to the deliberative process privilege under the latter exemption, Mr. McManus stated that the partial, draft audit report is not subject to the deliberative process privilege because it "consists of primarily factual material." He further characterized the partial, draft audit report as a "by the numbers' assessment of the loan sales program."

I denied Mr. McManus' appeal on September 15, 1998, both on procedural grounds and on the merits. Regarding the procedural grounds, I determined that Mr. McManus' appeal was untimely, and that he had failed to challenge one of the exemptions upon which the OIG had based the initial denial of his FOIA request (i.e., the investigative files privilege under exemption (b)(5)). With respect to the merits, I determined that the partial, draft audit report "is without a doubt . . . subject to the deliberative process privilege," and that it "was incorporated into the law enforcement investigative files associated with an ongoing OIG investigation, and its disclosure could reasonably be expected to interfere with the investigation."

On June 16, 1999, Hamilton filed its complaint seeking judicial review of the denial of its FOIA request. On August 12, 1999 the United States moved for dismissal or in the alternative, partial summary judgment upon the grounds that: (1) Hamilton failed to exhaust its administrative remedies because it failed to file its request for an administrative appeal within 30 days and it appears to seek documents beyond those requested in its FOIA request; and (2) OIG properly

Thomas J. Pickard, Chairman  
Integrity Committee  
Page 22

withheld the draft audit reports pursuant to exemptions (b)(5) and (b)(7)(A) of the FOIA. Attachment 8. The case is pending.

I hope that this information helps you put Hamilton's numerous allegations into the proper perspective. Hamilton has vigorously opposed the OIG's investigation for its own purposes. Nevertheless, I am confident that the OIG has carried out its responsibilities in a professional fashion, and, thus, I appreciate this opportunity to set the record straight. Please do not hesitate to contact me at (202) 708-0430, if I can be of any further assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Gaffney", with a stylized flourish at the end.

Susan Gaffney  
Inspector General

Attachments

September 28, 1999

Honorable Susan Gaffney  
Inspector General  
Department of Housing and Urban Development  
451 7th Street, SW  
Washington, D.C. 20410

IC # 212

Dear Ms. Gaffney:

Thank you for your letter, dated September 22, 1999, responding to the Integrity Committee's (IC) request for information in the captioned matter. The information you provided will be presented to the IC for review.

Sincerely,

*TS*

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

MAILED 71

SEP 30 1999

FBI

1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326  
MCW:mcw (7)  
*mw*

1 - [REDACTED]  
1 - [REDACTED]  
1 - [REDACTED]

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11-27

Dep. Dir.  
Chief of Staff  
Off. of Gen. Counsel  
Asst. Dir.:  
Crim. Inv.  
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Info. Res.  
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Lab.  
Off. of EEOA  
Off. of Public & Cong. Affs.  
Director's Office

APPROVED:

Crim. Inv. \_\_\_\_\_ Info. Res. \_\_\_\_\_ Training \_\_\_\_\_  
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Gen. Counsel \_\_\_\_\_ National Sec. \_\_\_\_\_  
Deputy Director \_\_\_\_\_ Gen. Counsel \_\_\_\_\_ Personnel \_\_\_\_\_ Cong. Affairs \_\_\_\_\_

6-7323

MAIL ROOM

FBI/DOJ



August 23, 1999

The Honorable Susan Gaffney  
Inspector General  
Department of Housing and Urban Development  
451 7th Street, SW  
Washington, D.C. 20410

①  
IC # 212

Dear Ms. Gaffney:

Enclosed for your review is a copy of a complaint received by the Integrity Committee (IC) of the President's Council on Integrity and Efficiency. The complaint is from Mr. Michael J. McManus, an attorney for Hamilton Securities Group (Hamilton), who alleges wrongdoing against you and your office.

For the IC to properly consider this complaint, you are requested to prepare a response to the allegations to clarify the issues for the IC. Please send your response to the IC at 935 Pennsylvania Avenue, NW, Room 7373, Washington, D.C., 20535-0001. The IC would appreciate your response within 30 days of the date of this communication.

The IC appreciates your assistance. Questions concerning this matter should be directed to my liaison for the IC, Supervisory Special Agent [REDACTED] at [REDACTED]

Sincerely,

(S)  
Thomas J. Pickard  
Chairman

Integrity Committee of the  
President's Council on Integrity and Efficiency

Enclosure

Dep Dir \_\_\_\_\_ 1 - Mr. Pickard, Room 7116  
Chief of \_\_\_\_\_ 1 - [REDACTED]  
Staff \_\_\_\_\_ 1 - [REDACTED]  
Off of Gen \_\_\_\_\_ 1 - [REDACTED] Room 7326  
Counsel \_\_\_\_\_  
Asst Dir \_\_\_\_\_ MCW:mcw (7)  
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& Cong Affs \_\_\_\_\_  
Director's Office \_\_\_\_\_

APPROVED:

Director \_\_\_\_\_  
Deputy Director \_\_\_\_\_  
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Affairs \_\_\_\_\_  
Chief of Public & \_\_\_\_\_  
Cong. Affairs \_\_\_\_\_



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to  
File No.

601 4th Street, N. W.  
Washington D. C. 20535

August 16, 1999

[REDACTED] b7c  
C. AUSTIN FITTS  
ANTITRUST

FRAUD AGAINST THE GOVERNMENT

This investigation was predicated upon information received by the United States Department of Justice (DOJ). John Ervin (Ervin) filed a Qui Tam suit and as part of the suit, the DOJ was made aware of Ervin's allegations. The DOJ requested that the United States Department of Housing and Urban Development (HUD), Office of the Inspector General (OIG) investigate Ervin's allegations. Since a part of Ervin's allegations involved bid rigging, HUD/OIG asked the FBI to assist in the investigation.

Ervin, a local HUD contractor, alleged that Hamilton Securities Group, Inc. (Hamilton), its founder C. Austin Fitts, [REDACTED] b7c  
[REDACTED] had conspired to allow certain bidders to win assets at United States Government auctions. 25

The auctions in question involved HUD's eleven billion dollar note sales program. HUD was attempting to liquidated both its single family and multifamily real estate portfolio through the sale of mortgage notes. HUD had acquired these mortgage notes as a result of the Federal Housing Administration (FHA), a component of HUD, making good on its insurance guarantee, paying off the mortgage lender and taking possession of the mortgage note.

Lacking expertise in the type of assets being auctioned, as well as the sheer volume of mortgages notes involved, caused HUD to hire a financial advisor, Hamilton, to handle their note sales program. Hamilton was owned by Fitts, a former FHA Commissioner and an advocate of the note sales program while a public servant. Ervin alleged that there were improprieties in the awarding of the financial advisor contract(s) to Hamilton.

Hamilton hired Blackrock Capital Financial LP (Blackrock) as a sub-contractor to assist on one of the first note sales. Blackrock was a "player" on Wall Street and had previously participated in Resolution Trust Corporation (RTC) asset sales. One of Ervin's allegations was that by working as a sub-contractor to Hamilton, Blackrock had access to inside information concerning future note sales. According to Ervin, Blackrock's competitors were not privy to this valuable information.

Interviews of Blackrock's corporate officers, as well as those individuals who worked on the sub-contract between Hamilton and Blackrock and those directly involved in the note sales were completed. None of these interviews substantiated any of Ervin's allegations.

Likewise, interviews of employees, partners and owners of Goldman Sachs & Company, Ocwen, Wilshire, National Security and others involved in the HUD notes sales failed to uncover any concerns, suspicions, or evidence of collusion being involved in the sales. Even losing bidders did not attribute their lack of success to collusion, or other bidders having inside information.

Interviews of HUD personnel involved in the note sales, as well as interviews of former Hamilton employees and sub-contractors were negative.

All of the information obtained during the course of this investigation was presented to Assistant United States Attorney (AUSA) Richard Chapman, United States Attorney's Office, District of Columbia and to Senior Trial Attorney Hays Gorey, Antitrust Division, DOJ for a prosecutive opinion. Both AUSA Chapman and Senior Trial Attorney Gorey declined prosecution in this matter.

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Mr. J. Michael McManus  
Drinker Biddle and Reath LLP  
1500 K Street, NW, Suite 110  
Washington, D.C. 20005-1209

Dear Mr. McManus:

Sincerely,

15,

1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326  
MCW:mcw (7)

1 - [REDACTED]  
1 - [REDACTED]  
1 - [REDACTED]

Dep. Dir. \_\_\_\_\_  
Chief of \_\_\_\_\_  
Staff \_\_\_\_\_  
Off. of Gen. \_\_\_\_\_  
Counsel \_\_\_\_\_  
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Servs.	Laboratory	Affairs
Director	Fed. - e	National Sec.
Deputy Director	Gen. Counsel	Personnel
		Office of Public & Cong. Affairs

MAIL ROOM

July 8, 1999

Mr. J. Michael McManus  
Drinker Biddle and Reath LLP  
1500 K Street, NW, Suite 110  
Washington, D.C. 20005-1209

IC # 212

Dear Mr. McManus:

The purpose of this letter is to acknowledge the Integrity Committee's receipt of your letter, dated June 30, 1999, by which you provided additional information concerning the above-captioned matter. The information you provided will be presented to the Integrity Committee for review. Thank you for bringing this information to the Integrity Committee's attention.

Sincerely,

151

Thomas J. Pickard  
Chairman  
Integrity Committee of the  
President's Council on Integrity and Efficiency

20

MAILED 81

JUL 9 1999

Mr. Pickard, Room 7116  
Room 7326  
MCW:mcw (7)

1 - [redacted]  
1 - [redacted]  
1 - [redacted]

Dep. Dir. \_\_\_\_\_  
Chief of Staff \_\_\_\_\_  
Off. of Gen. Counsel \_\_\_\_\_  
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MAIL ROOM

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

- ☐ Information pertained only to a third party with no reference to the subject of your request or the subject of your request is listed in the title only.
- ☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

\_\_\_\_\_ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

\_\_\_\_\_ Page(s) withheld inasmuch as a final release determination has not been made. You will be advised as to the disposition at a later date.

\_\_\_\_\_ Pages were not considered for release as they are duplicative of \_\_\_\_\_

2 Page(s) withheld for the following reason(s): OUTSIDE SCOPE OF REQUEST

- ☒ The following number is to be used for reference regarding these pages:

296-1240657-NR DATED 7-13-99

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7/16/99

Mr. Pickard:

RE: Letter from Michael J. McManus, Attorney for Hamilton Securities Group, Inc. and Hamilton Securities Advisory Services ("Hamilton")

This responds to your request for Office of the General Counsel (OGC) review of a letter from Mr. McManus, Attorney for Hamilton, forwarded to you by the addressee, June Gibbs Brown, Inspector General (IG) of the Department of Health and Human Services. We understand that you were also the addressee of a similar letter, as well as the recipient of a copy of the letter to IG Brown. We believe that you received the letter and copies in your capacity as Chairman of the Integrity Committee (IC) of the President's Council on Integrity and Efficiency (PCIE). Although the letter makes reference to a concurrent FBI investigation, it essentially states a complaint against the Department of Housing and Urban Development OIG and IG Susan Gaffney, concerning various aspects of the investigation of Hamilton.

The enclosed electronic communication (EC) dated 5/20/99, captioned "[redacted] C. Austin Fitts; FAG-HUD," indicates that the criminal investigation has been closed by prosecutive declination. The EC also evidences plans for an FBI interview of C. Austin Fitts, Hamilton's President and Chief Executive Officer and "perhaps one or two of her top lieutenants." The EC announces a scheduled 6/02/99 meeting to arrange the interview of Ms. Fitts, after which, the FBI's involvement in the matter will end. According to the EC, the only major unresolved issue is the "enforcement of HUD/OIG's administrative subpoenas" served on Hamilton. Notwithstanding Mr. McManus' statement in the captioned letter that hundreds of thousands of documents have been produced to respond to OIG's subpoenas, the EC observes that, as of 5/20/99, Mr. McManus had "refused to comply and turn over Hamilton's internal records and communications." This information is relevant to the allegation of IG misconduct referred to the IC for review.

Because the letter states a complaint for IC consideration and the FBI no longer has criminal investigative responsibilities in the matter, we recommend that no action be taken other than IC review of the allegation against the HUD OIG and IG Gaffney pursuant to the usual IC administrative misconduct review process. Your letter, as IC Chairman, to Mr. McManus, confirming receipt of the complaint and assignment of the allegation for administrative review by the IC, should be a sufficient response.

Patrick W. Kelley  
Patrick W. Kelley  
Deputy General Counsel

Enclosure

1 - Mr. P. Kelley, Rm 7159  
1 - [redacted] Rm 7373  
1 - [redacted]  
1 - [redacted]  
KMM:kmm(5)

XXXXXX  
XXXXXX  
XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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2 Pages were not considered for release as they are duplicative of 296-124 0657-15

\_\_\_\_\_ Page(s) withheld for the following reason(s): \_\_\_\_\_

- ☒ The following number is to be used for reference regarding these pages:

296-124 0657-21 p 2-3.

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X No Duplication Fee X  
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XXXXXX  
XXXXXX

INTEGRITY COMMITTEE (IC)  
MEETING OF 8/6/99  
Notes of Program Analyst [REDACTED]

MEETING ATTENDEES

b7c  
Mr. Thomas J. Pickard, Assistant Director, Criminal Investigative Division, FBI - Chairman  
[REDACTED] Supervisory Special Agent (SSA), Governmental Fraud Unit (GFU), FBI [Working Group (WG)]  
[REDACTED] Office of Management and Budget (OMB)  
Mr. Joe Gangloff, Principal Deputy, Public Integrity Section (PIS), Department of Justice (DOJ)  
Ms. Elaine D. Kaplan, Special Counsel, Office of Special Counsel (OSC)  
Ms. Jane Ley, Deputy Director for Government Affairs and Special Projects, Office of Government Ethics (OGE)  
Ms. Kristine Martin, Attorney Advisor, Office of General Counsel, FBI (WG)  
Mr. Patrick McFarland, IG, Office of Personnel Management (OPM)  
Mr. Stephen Potts, Director, OGE  
[REDACTED] OMB  
Mr. Walter Stachnik, IG, Securities Exchange Commission (SEC)  
Mr. Roger Viadero, IG, Department of Agriculture (DOA)  
[REDACTED] Program Analyst, GFU, FBI (WG)

I. OPENING INTRODUCTIONS/REMARKS BY CHAIRMAN PICKARD

- The meeting began at approximately 2:00 p.m.

II. NEW CASES

0/s  
b5  
b7c  
IC #:  
Subject:  
Complainant:  
Date Received:

ALLEGATION(S)

b7c  
1 - Mr. Pickard, Room 7116  
1 - [REDACTED]  
1 - [REDACTED] Room 7326  
MCW:mcw (27)

1 - [REDACTED]  
1 - [REDACTED]  
1 - [REDACTED]

XXXXXX  
XXXXXX  
XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

\_\_\_\_\_ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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3 Page(s) withheld for the following reason(s): OUTSIDE SCOPE OF REQUEST

- ☒ The following number is to be used for reference regarding these pages:

296-1240657-22 p 2-4

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XXXXXX

[REDACTED]

IC #:

Subject(s):

Complainant:

Date Received:

d/s  
b7c  
b5

ALLEGATION(S)

PIS ANALYSIS

IC DISPOSITION

III. PREVIOUS CASES

IC #: 212 (296-HQ-1240657)

Subject(s): IG Susan Gaffney,

Department of Housing and Urban Development (HUD)

Complainant: C. Austin Fitts, Chairman,  
Hamilton Securities Group

Date Received: 12/23/97 (Original)  
4/21/99 (Reopened)

ALLEGATIONS

- The HUD IG has conducted an inappropriate investigation against Hamilton Securities. The investigation was wide-ranging and unfocused. OIG repeatedly leaked proprietary and confidential info about the investigation to the press in an attempt smear, slander, and intimidate.

- IG Gaffney personally engaged in the burying of an audit relative to the case that would clear Hamilton.

#### PIS ANALYSIS

After review, the Public Integrity Section advised that the complaint does not provide sufficient information to warrant a criminal investigation.

#### NARRATIVE

This case was initially presented to the IC at its meeting of 4/13/98. Upon review, the IC determined that the complaint lacked specific allegations against the IG, and the IC decided to refer the complaint to the IG for information and close. However, McManus, an attorney for Hamilton, has recently come forward with new allegations. Specifically, he alleges that IG Gaffney personally covered-up an audit relative to the case that would clear Hamilton. McManus alleges that IG Gaffney covered-up the audit because of political considerations and a personal animosity toward Hamilton.

#### IC DISPOSITION

#### PENDING

The IC decided to contact IG Gaffney for a response to the allegations.

o/s  
b7c  
b5  
IC #

Subject:

Complainant:

Date Received:

#### ALLEGATION(S)

#### PIS ANALYSIS

XXXXXX  
XXXXXX  
XXXXXXFEDERAL BUREAU OF INVESTIGATION  
FOIPA  
DELETED PAGE INFORMATION SHEET

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Section 552Section 552a☐ (b)(1)☐ (b)(7)(A)☐ (d)(5)☐ (b)(2)☐ (b)(7)(B)☐ (j)(2)☐ (b)(3)☐ (b)(7)(C)☐ (k)(1)☐ (b)(7)(D)☐ (k)(2)☐ (b)(7)(E)☐ (k)(3)☐ (b)(7)(F)☐ (k)(4)☐ (b)(4)☐ (b)(8)☐ (k)(5)☐ (b)(5)☐ (b)(9)☐ (k)(6)☐ (b)(6)☐ (k)(7)

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\_\_\_\_\_ Pages were not considered for release as they are duplicative of \_\_\_\_\_

9 Page(s) withheld for the following reason(s): outside scope of request  
pss 14-15 missing

- ☒ The following number is to be used for reference regarding these pages:

296-1240657-22 p 7-13, 16-17.

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b5

[REDACTED]

The meeting adjourned at approximately 4:20 p.m.



Office of the General Counsel  
Investigative Law Unit  
Open/Close Assigned Project Case Sheet

LCMS = 148741 (required to close or reassign a case)

Case Information: Open: ☒ Close: ☐

LCMS Bureau Class Code: 1974

Assign To: [REDACTED]

Reassign To: [REDACTED]

*open in*  
[REDACTED] name  
Request by  
[REDACTED]  
6/29/94 *RR*

Plaintiff & Defendant Information (19701, 197014 & 197015 cases only)

Plaintiff Information

Defendant Information

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[REDACTED], *et al*

File as \_\_\_\_\_

Electronic File Name \_\_\_\_\_

Comments: \_\_\_\_\_

[REDACTED] *P/PA SP* *SEP*  
[REDACTED]

*b7c*

12/20 1999

TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
	7176	MR. FREEH [REDACTED]		7427	MR. T. KELLEY [REDACTED]
	7142	MR. BRYANT		7159	(VACANT) [REDACTED]
	7427	MR. PARKINSON [REDACTED]		7435	(VACANT) (VACANT)
				7159	MR. P.W. KELLEY [REDACTED]
	11255	MR. DESARNO			
	ACADEMY	MR. HIGGINBOTHAM		7975	MR. BOWMAN [REDACTED]
	6012	MR. GARCIA		7975	[REDACTED]
	5829	MRS. MORRIS		7338	[REDACTED]
	7110	MR. GALLAGHER		7326	[REDACTED]
	7116	MR. PICKARD		NP 300	[REDACTED]
	3090	DR. KERR		ACADEMY	[REDACTED]
	7825	MR. THOMPSON			
	6032	MR. HOUK		5448	[REDACTED]
	7240	MR. COLLINGWOOD		7927	[REDACTED]
	7129	MR. DEPEO		7947	[REDACTED]
	7901	MS. KOCH		7927	[REDACTED]
	18327	MAIL ROOM		7947	[REDACTED]
	1270	VOUCHER UNIT		7427	SUPPLY TECHNICIAN
	4981	EDSP		7427	[REDACTED]
	18973	PRINTING UNIT		7427	[REDACTED]
	4913	FILE ROOM			
	M				
ROOM					

Call Me

For Your Info.

See Me

Prepare Response

Approp. Action

For Your Approval

Per Inquiry

Status/Facts

Looks like something for ILC

*TK*  
 THOMAS A. KELLEY  
 DEPUTY GENERAL COUNSEL  
 ROOM 7427, EXT. [REDACTED]

b2  
b7c

6/25

1999

TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
___	7176	DIRECTOR	___	7427	MR. T. KELLEY
___	7142	MR. BRYANT	___	7159	MRS. THORNTON
___	7427	MR. PARKINSON	___	7159	MR. KELLEY
___	WV C-3	MR. DESARNO	___	7435	VACANT
___	7825	ACTING AD INSPECTIONS	___	7975	MR. BOWMAN
___	7129	MR. DeFEO	___	7975	
___	6012	MR. GARCIA	___	7338	
___	6032	MR. HOUK	___	7326	
___	3090	MR. KERR	___	NP 300	
___	7110	MR. GALLAGHER	___	ACADEMY	
___	5829	MRS. MORRIS	___	5448	
___	7116	MR. PICKARD	___	7927	
___	ACADEMY	MR. HIGGINBOTHAM	___	7927	ACTING UC CLM II
___	7240	MR. COLLINGWOOD	___	7947	
___	ACADEMY	MR. NISLEY	___	7947	
___	7901	MS. KOCH	___	7427	SUPPLY TECH.
___	M		___	7427	COMP. SPECIALISTS
___	ROOM				
___	1B327	MAIL ROOM			
___	1270	VOUCHER UNIT			
___	4981	EDSP			

\_\_\_ Call Me

\_\_\_ For Your Info.

\_\_\_ See Me

\_\_\_ Prepare Response

\_\_\_ Approp. Action

\_\_\_ For Your Approval

\_\_\_ Per Inquiry

\_\_\_ Pls. Handle

Please review and then let's talk about what  
it is we are being requested to do. *E*

*K*  
PATRICK W. KELLEY  
DEPUTY GENERAL COUNSEL  
ROOM 7159, EXT. *[redacted]*

b2  
b7c

# ELECTRONIC COMMUNICATIONS CONTROL SHEET

✓  
Front Office

<input type="checkbox"/> National Security Law	<input type="checkbox"/> Civil Litigation I
<input type="checkbox"/> Administrative Law	<input type="checkbox"/> Civil Litigation II
<input type="checkbox"/> Investigative Law	<input type="checkbox"/> Employment Law I
<input type="checkbox"/> Legal Instruction	<input type="checkbox"/> Employment Law II
<input type="checkbox"/> Legal Forfeiture	<input type="checkbox"/> Civil Discovery Review

Attached is a WORKING COPY of an EC, downloaded from ACS.

b7c [ Please complete this form when the lead has been completed  
and return it to [REDACTED] or [REDACTED] in Room 7159 to cover the lead.

Thank you!

60A-WF-204920

Case ID #

12

Serial

Type of Correspondence Prepared

Date Completed

Precedence: ROUTINE

Date: 06/10/1999

To: General Counsel

From: Criminal Investigative

Financial Crimes/Governmental Fraud/Room 7373

Contact: SSA [REDACTED] x [REDACTED]

Approved By: [REDACTED]

Drafted By: [REDACTED] mcw

Case ID #: 60A-WF-204920 (Pending)

Title: [REDACTED] ET AL.;

ANTITRUST

OO: WFO (60A-WF-204920)

Synopsis: EC refers the enclosed letter to the Office of General Counsel (OGC) for review and the preparation of a response.

Enclosure(s): A letter, dated 4/21/99, from attorney Michael J. McManus of Drinker Biddle & Reath, LLP, Washington, D.C.

Details: Enclosed for the OGC is a letter, dated 4/21/99, from attorney Michael J. McManus of Drinker Biddle & Reath, LLP, Washington, D.C. In his letter, Mr. McManus criticizes an investigation being worked jointly between the FBI and the Office of Inspector General (OIG), Department of Housing and Development (HUD). Mr. McManus, who represents Hamilton, alleges that the investigation is not being conducted consistent with appropriate procedures and practices.

This matter is being referred to the OGC for review and the preparation of an appropriate response. Questions concerning this matter should be directed to Supervisory Special Agent

[REDACTED] Governmental Fraud Unit, x [REDACTED]

LEAD(s):

Set Lead 1:

GENERAL COUNSEL

AT WASHINGTON, DC

See instructions in EC.

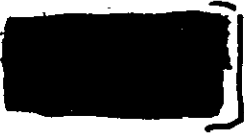
b2  
b7c

Case ID : 60A-WF-204920

Serial : 72

Assigned  
6/18/99

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1



b7c

(Rev. 3/29/99)

CRIMINAL INVESTIGATIVE DIVISION

4-22

1999

TO	ROOM	NAME/TITLE	TO	ROOM	NAME/TITLE
	7176	DIRECTOR		7443	
				7116	
	7142	MR. BRYANT		3012	
	WV C-3	MR. DE SARNO		5155	
	7110	MR. GALLAGHER		3028	
	6012	MR. GARCIA		7373	
	ACADEMY	MR. HIGGINBOTHAM		7443	
	6032	MR. HOOK		5155	
	3090	DR. KERR		4330	
	5829	MRS. MORRIS		3028	
	7116	MR. PICKARD		3155	
	7825	MR. THOMPSON		5012	
				5012	
	7240	MR. COLLINGWOOD		3012	
	7129	MR. DE FEO		7116	
				7443	
	7901	MS. KOCH		5129	ADMIN. UNIT
	7427	MR. PARKINSON		5129	BUDGET UNIT
	ACADEMY	SAC NISLEY		7116	

(3) [REDACTED]  
ROOM

Call Me  
See Me  
Approp. Action  
Per Inquiry

For Your Info.  
Prepare Response  
For Your Approval  
Status/Facts

(4) [REDACTED]

I think this letter was sent to me in my capacity as Chairman of the Integrity Committee. On the last page they sent a copy to Jane Gibe Brown in her role as ADIC Chairman

1.) On pg 6 they mention the FBI questioning witnesses - do we have a case?

2.) Have OAC view & prepare reply for

THOMAS J. PICKARD  
ASSISTANT DIRECTOR  
ROOM 7116, EXT. [REDACTED]

b2  
b7c

August 3, 1999

Mr. Thomas J. Pickard  
Chairman  
Integrity Committee of the President's  
Council on Integrity and Efficiency  
935 Pennsylvania Avenue, N.W.  
Room 7373  
Washington, D.C. 20535-0001

RE: IC # 212

Dear Mr. Pickard:

We recently advised you that on behalf of our client, Hamilton Securities Group, Inc., we filed a FOIA suit in an effort to obtain documents relating to a favorable audit conducted on our client by the Denver Audit Office of the Office of Inspector General for HUD. Access to that information has been denied us by Susan Gaffney, the HUD Inspector General. Attached to that lawsuit was an Affidavit by Cindy Ecker, a former HUD OIG employee and the lead auditor for the audit team.

On July 1, 1999, we received a letter (copy attached) from Bryan Saddler, Associate Counsel to the Inspector General, who claimed that Ms. Ecker's affidavit was unauthorized and therefore must be withdrawn. On July 13<sup>th</sup>, I provided the attached response to Mr. Saddler, and I have not heard back from him.

I believe that the reason I have not heard back from Mr. Saddler is that he knows the position advanced by the OIG in his letter is legally wrong, and further that he must have known that prior to writing his letter. On June 15, 1998, in the case of *Alexander, et al. v. The Federal Bureau of Investigation, et al.* (copy attached), Judge Royce Lamberth of the U.S. District Court for the District of Columbia ruled clearly that affidavits such as the one signed by Ms. Ecker are not subject to any of the prescriptions claimed by the HUD OIG. We believe that the OIG's letter to us was yet another attempt by the OIG to intimidate and abuse the rights of our clients.

Moreover, we are gravely concerned that Ms. Ecker may have been personally contacted by someone in the HUD OIG's office in an attempt to intimidate her by providing her with the same erroneous information.



DrinkerBiddle&Reath

Mr. Thomas J. Pickard  
August 3, 1999  
Page 2

We therefore ask that as part of your investigation you look into this matter, as we believe that additional misconduct by the Office of Inspector General for HUD is indicated, perhaps rising to the level of obstruction of justice.

Very truly yours,

A handwritten signature in black ink, appearing to read "McManus", with a long horizontal line extending to the right.

Michael J. McManus

MJM/gw  
Enclosures



U.S. Department of Housing and Urban Development

**Office of Inspector General**

451 7th St., S.W.

Washington, D.C. 20410

**COPY****JUL - 1 1999**

Michael J. McManus  
Drinker, Biddle & Reath, LLP  
1500 K Street, N.W.  
Suite 1100  
Washington, DC 20005  
Via Facsimile Machine: (202) 842-8465

Re: Hamilton Securities Group, Inc. v. United States, Civil Action  
No. 1:99-CV-01563-SS (D.D.C.)

Dear Mr. McManus:

On June 22, 1999, the Office of Inspector General ("OIG") was provided a copy of the complaint filed on June 16, 1999, in the above captioned case. The affidavit of former OIG employee Cindy L. Ecker was attached to the complaint. As you are no doubt aware, the Inspector General's approval of this affidavit was neither sought nor obtained.

The regulations of the OIG require that the Inspector General must approve requests for "[a]ny information or material which an individual acquired while an employee of the Office of Inspector General as a part of the performance of official duties or because of his or her official status." See 24 C.F.R. § 2004.3(a)(3). "Without prior approval of the Inspector General, no employee or former employee of the Office of Inspector General shall . . . disclose any information . . . acquired as part of the performance of official duties or because of official status." See 24 C.F.R. § 2004.3(b) (emphasis added). Further, OIG employees and former employees are prohibited from offering opinion testimony for "any party other than the United States." See 24 C.F.R. § 2004.3(c). Regulations of this kind have been uniformly upheld by the Federal courts. See, e.g., United States ex rel. Touhy v. Ragen, 340 U.S. 462, 467-70 (1950); Boske v. Comingore, 177 U.S. 459, 467-70 (1900); Davis Enterprises v. United States Env. Protection Agency, 877 F.2d 1181, 1184 (3d Cir. 1989); Cates v. LTV Aerospace Corp., 480 F.2d 620, 622-24 (5th Cir. 1973); Tholen Supply Co. v. Continental Casualty Co., 859 F. Supp. 467, 469-70 (D. Kan. 1994); Hotel Employees-Hotel Ass'n Pension Fund v. Timperio, 622 F. Supp. 606, 607 (S.D.

Michael J. McManus

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Fla. 1985). You did not seek and obtain the Inspector General's approval of Ms. Ecker's affidavit, and, thus, Ms. Ecker's affidavit is unauthorized and must be withdrawn.

Indeed, Ms. Ecker's affidavit could not have been approved under applicable regulatory guidance. For example, the affidavit states, among other things, "My impression was that OIG Headquarters staff did not want to release a report that reflected favorably on the loan sale program until the allegations made by Ervin had been fully investigated." This statement and others in the affidavit constitute prohibited opinion testimony. Moreover, some of the opinion testimony in the affidavit improperly purports to assert the opinions or conclusions of the OIG. In that regard, the affidavit states, "We had drafted a report on the credit reform aspect of the loan sale program . . . . [T]he overall tone of the report was favorable." Not only is this statement prohibited without the Inspector General's prior approval, it is also highly misleading. Ms. Ecker, as a journeyman auditor, was not authorized to sign and issue audit reports on behalf of the OIG. Accordingly, any findings or recommendations that Ms. Ecker may have reached or developed with respect to credit reform were nothing more than drafts, which were subject to acceptance, revision, or outright rejection by her supervisory staff. For these and other reasons, the affidavit could not have been approved by the Inspector General.

Accordingly, we request that you withdraw Ms. Ecker's affidavit, which you filed in the above-captioned case, and that hereafter you respect outstanding, properly issued regulations of the OIG. Please contact me, at (202) 708-1613, should you have any questions concerning this letter.

Very sincerely yours,



BY: Bryan Saddler

Associate Counsel to the Inspector General

