

**INSPECTOR GENERAL REPORT: ALLEGATIONS
OF IMPROPER LOBBYING AND OBSTRUCTION
AT THE DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
SECOND SESSION

—
FEBRUARY 26, 2014
—

Printed for the use of the Committee on Financial Services

Serial No. 113-65



U.S. GOVERNMENT PRINTING OFFICE

88-527 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
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INSPECTOR GENERAL REPORT: ALLEGATIONS OF IMPROPER LOBBYING AND OBSTRUCTION AT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Wednesday, February 26, 2014

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 2128, Rayburn House Office Building, Hon. Patrick McHenry [chairman of the subcommittee] presiding.

Members present: Representatives McHenry, Bachmann, Duffy, Hultgren, Barr, Rothfus; Green, Maloney, Sinema, and Beatty.

Ex officio present: Representative Hensarling.

Chairman MCHENRY. The Oversight and Investigations Subcommittee of the Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. My apologies to Members for my late arrival, and especially to the full committee chairman, who is present. I apologize for delaying him and my ranking member.

I will now recognize myself for 5 minutes for an opening statement. This morning we welcome David Montoya, the Inspector General for the U.S. Department of Housing and Urban Development (HUD), to testify on an investigation I requested in August 2013, August of last year.

On July 31, 2013, an e-mail was sent on behalf of the HUD Deputy Secretary to “friends and colleagues,” calling on them to encourage Senators to vote to advance Senate consideration of HUD’s appropriations bill. Because the e-mail appeared to violate Federal anti-lobbying laws, on August 28th of that year I requested that the Inspector General investigate this matter and advise the committee on whether any laws had been broken.

On February 18th of this year, the Office of the Inspector General provided its report of investigation to the committee. Their Inspector General found that Deputy Secretary Jones and other HUD officials had acted improperly and that certain HUD officials had obstructed the Inspector General’s investigation and attempted to conceal their improper activities.

The Inspector General also found that one HUD official was actively working to keep information requested by this committee from “the Republicans.” And that this particular HUD official had

coordinated his efforts to thwart the committee's proper investigative functions with its White House Counsel's Office.

This investigation is an example of Inspectors General doing the job that Congress gave them in the 1978 Inspector General Act. Offices of Inspector General were established by public law as permanent, nonpartisan, and independent offices. The Inspector General Act states that the three principal purposes of Inspectors General are: first, conducting and supervising audits and investigations related to agency programs and operations; second, providing leadership and coordination and recommending policies for activities designed to promote the economy, efficiency, and effectiveness and the prevention and detection of fraud and abuse in such programs and operations; and third, keeping the agency head and Congress fully and currently informed about problems and deficiencies related to such programs and the necessity for and progress of corrective action.

The Inspector General's report delivered to this subcommittee on February 18, 2014, is an example of how inspectors general can play a valuable role in assisting Congress in exercising its oversight of the Executive Branch. This is a good thing no matter the party of the Presidency or the party who controls the House or the Senate. This is about good governance.

However, it is important to note that Inspectors General are not required to conduct a review requested by legislators, an agency head, the President, or anyone. Inspectors General are Cabinet-level agencies, and are independent of the agencies they review and to Congress alike.

This independence is crucial to their achieving their mission and should be protected at all costs.

I would like to thank Inspector General Montoya for being here, and I thank you for your service in our government and to the American people. And I want to thank you and your staff for this important report, and I look forward to your testimony.

With that we will now recognize the ranking member of the subcommittee, Mr. Green, for 5 minutes for an opening statement.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Chairman, I would also like to thank Mr. Montoya for testifying today. Today's hearing is an important one. At issue is whether certain actions taken by HUD officials were violations.

The HUD OIG report dated February 18, 2014, outlines actions taken by officials at HUD in regards to, among other things, e-mails sent requesting that recipients encourage certain elected officials to vote in favor of a pending piece of appropriations legislation.

Many of the allegations made in this report are deeply concerning and cannot be condoned. I am very much interested in knowing what steps HUD has taken to ensure there is no future confusion about what is acceptable as it relates to matters pending before Congress. I believe that a clear understanding of what occurred is necessary before final conclusions are drawn.

To this end, I look forward to an engaging discussion with Mr. Montoya about the HUD OIG investigation. I also believe, Mr. Chairman, that there are two things we should not do. We should

not minimize the seriousness of the allegations, and we should not exaggerate the final conclusions.

To do either, would not do justice to the findings and conclusions. Again, I believe it is our responsibility to fully understand this matter. I trust that the GAO and the OSC will present their reports and that HUD will respond to the disturbing allegations.

I thank you, Mr. Chairman, and I yield back the balance of my time.

Chairman MCHENRY. I certainly thank the ranking member, and I will now recognize Mr. Duffy for 2 minutes.

Mr. DUFFY. Thank you, Mr. Chairman, and thank you for holding this very important hearing. This committee has sent a number of requests for information and documents to many of the Executive Branch agencies this committee has jurisdiction over, and the Obama Administration has been largely unresponsive to this committee's legitimate oversight function.

This is surprising since President Obama promised the American people that he would have the most transparent Administration in history and continues to claim an unprecedented level of openness. Today's hearing will lay bare the falsity of these high-minded claims.

The report of the Inspector General and his written statement demonstrate to the American people just how political the Obama Administration is and how political operatives within agencies, such as HUD, work hand in glove with the White House to thwart legitimate oversight efforts by this committee.

Although this hearing will open the door to reveal the true nature of the Obama Administration's political operatives within HUD, I believe that this is only the tip of the iceberg. There are political operatives in every Executive Branch agency working to ensure that the American people are kept in the dark about what is really going on in our Federal Government.

In fact, this hearing will show that the Administration has taken obstruction of congressional investigations to a whole new level. I look forward to Mr. Montoya's testimony today, and I think it will expose a shocking set of behaviors and methodical behavior within HUD to obstruct our investigations and our efforts in this committee.

Once again, Mr. Chairman, I thank you for holding this very important hearing, and I yield back.

Chairman MCHENRY. I thank my colleague from Wisconsin. Thank you. We will now recognize Mrs. Beatty for 2 minutes.

Mrs. BEATTY. Thank you, Chairman McHenry, and Ranking Member Green. And Mr. Montoya, thank you again for being here today. As my other colleagues expressed this morning, we appreciate you coming forth for your testimony here today and for the work that you are doing in the Inspector General's Office at HUD.

Like many of my colleagues, I received and became aware of the existence of this investigation into the activities of a few high-level officials at HUD. So far, the redacted version of Mr. Montoya's report that I have seen has not been finalized as his office is still waiting for further investigative results from the GAO.

But if even half of the conduct described in the preliminary report is substantiated in the final report, I find it all very alarming,

as you can imagine. Certainly, any allegations of clear and direct violation of long-established anti-lobbying in appropriations laws, as well as attempts to circumvent specific internal HUD policies alone would warrant cause for concern.

But if you add to that any of the findings of obstruction of justice, witness coaching, or evidence of tampering, it would make it a very disturbing report. And all of this brings us back to the very important mission of the Inspector General. When Congress passed the Inspectors General Act, it was specifically for the purpose of facilitating independent investigations such as this which can be used to root out waste, fraud, and abuse within Federal Government.

I applaud your Office for your diligent efforts to preserve Americans' faith in their government by working every day to improve the integrity of HUD's operation and ensure that taxpayers' dollars are spent improving the fabric of our society because certainly, none of us should be against the work of HUD because of what a couple of individuals may do. I yield back.

Chairman MCHENRY. We will now recognize Mr. Barr of Kentucky for 2 minutes.

Mr. BARR. Thank you, Mr. Chairman. Inspector General Montoya, I have read your report and I am impressed with its thoroughness and professionalism, and I want to thank you for the outstanding work that you and your team are doing.

Your report lays out what appears to be a series of actions by HUD officials designed to not only obstruct your investigation but also to obstruct the legitimate and appropriate oversight of this subcommittee and of this Congress.

So I was very surprised and disappointed to see that the Department of Justice has declined to prosecute any of the HUD officials identified in your report. As an attorney accustomed to applying the facts to the law, it appears to me that there is more than a good faith argument that certain HUD officials identified in your report obstructed your investigation and misled your investigators in violation of Federal criminal law.

It also appears to me that at least one HUD official has also obstructed Congress in violation of Federal law. I would note that the Federal obstruction of justice statutes as well as the Federal statute criminalizing false statements all have statutes of limitations of 5 years, so that even if this Department of Justice and Attorney General are unwilling to enforce the law, perhaps in the next 5 years we will have a Department of Justice and an Attorney General willing to uphold the law and the integrity of both the Inspector General's investigations and the legitimate oversight interests of this Congress.

Thank you, Mr. Chairman, for holding this important hearing. I also appreciate the ranking member's recognition that it is an important hearing, and that we should not minimize the seriousness of these allegations. After all, this is not and should not be about partisan politics. Every Member of Congress, whether a Republican or a Democrat, and frankly, every American, should be concerned and dismayed anytime Executive Branch agencies engage in this kind of misconduct and attempt to obstruct a legitimate investigation of either an Inspector General or the Congress.

I look forward to the Inspector General's testimony, and I yield back the balance of my time.

Chairman MCHENRY. I thank my colleague.

I will now recognize the Inspector General of the Department of Housing and Urban Development, the Honorable David A. Montoya. Mr. Montoya was sworn in as the HUD Inspector General on December 1, 2011. Mr. Montoya's 26-year career has been dedicated to public service focused on law enforcement with over 16 years of oversight, supervisory, and leadership positions, including more than 10 years' experience in the Federal senior executive service. Mr. Montoya is a native of El Paso, Texas, and a 1986 graduate of the University of Texas at El Paso.

The witness' written statement will be made a part of the record. We will now recognize Mr. Montoya for 5 minutes.

STATEMENT OF THE HONORABLE DAVID A. MONTOYA, INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Mr. MONTOYA. Thank you, sir. Chairman McHenry, Ranking Member Green, and members of the subcommittee, I am David Montoya, the Inspector General of the Department of Housing and Urban Development, and I want to thank you for the opportunity to testify today on our work.

As Inspector General, my staff and I strive to make a positive difference in HUD's performance and accountability. We are committed to our statutory mission of detecting waste, fraud, abuse, and mismanagement, as well as promoting the effectiveness of HUD's programs and operations.

Our independence and impartiality is imperative and allows for clear and objective reporting to the Secretary and to the Congress.

I am here today because my office received a request from this subcommittee regarding an e-mail communication sent by former HUD Deputy Secretary Maurice Jones on July 31, 2013.

The e-mail called on recipients to contact specific U.S. Senators and encourage them to vote in favor of procedural motions to advance consideration of legislation making appropriations for Fiscal Year 2014 to the Department of Transportation, HUD, and related agencies.

The e-mail also urged recipients to oppose certain amendments and suggested that they encourage named Senators to support final passage of the bill. The subcommittee's correspondence suggested that the directness and specificity of the e-mail appeared to violate well-established Federal restrictions on lobbying by Federal agencies, and based on the apparent violations of the Federal law, requested that my office thoroughly investigate the matter and then advise the subcommittee.

Our subsequent investigation disclosed that the decision to send the July 31st e-mail was based on having the HUD Secretary or Deputy Secretary engage in a "more aggressive lobbying effort" relative to legislation or an appropriation. The catalyst for this new posture was then-General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, Elliot Minberg.

We determined this e-mail was a grass-roots lobbying campaign on a matter that was pending before Congress. At the time the July 31st e-mail was drafted and sent, HUD's internal policies and guidelines regarding lobbying were long-standing and designed to create not only the appearance of ethical behavior but to include actual guidelines to ensure ethical behavior by all employees of the Department including Presidentially-appointed Senate-confirmed officials.

In spite of clear Department policies which were rooted in the statutory provisions, our investigation disclosed that the interest for HUD to be more aggressive in its lobbying activities overrode their adherence to their own long-standing policies.

While our investigation did not result in criminal or civil prosecution, it did discern an institutional failure to follow HUD's existing internal policies and guidance. At a certain level, HUD's actions leave the impression of impropriety and ethical lapses.

The Department should have more fully scrutinized the decision to send the e-mail as well as its content and its list of recipients. This inattention was particularly evident when one examines the types of organizations represented on the list of e-mail recipients, which included 46 HUD employees.

While our investigation determined that including 46 HUD employees was inadvertent on the part of the Deputy Secretary, the lack of due diligence by those preparing the e-mail may have caused the Deputy Secretary to commit a prohibitive personnel practice and to violate Federal law prohibiting an official from coercing a Federal employee's political activities.

Equally troubling was the fact that the e-mail was sent to individuals at organizations that receive HUD funding. Such organizations are generally prohibited from using Federal funds to carry out certain lobbying activities.

In fact, one of the recipients, a large public housing authority, had recently been found by my office to have violated Federal requirements by using Federal funds to carry out lobbying activities. Of significant concern to me, and something that I will not tolerate as Inspector General or as a career law enforcement Federal official, was the interference with our investigation, specifically by Mr. Minberg, who not only interrupted and inserted himself into an ongoing witness interview, but he threatened to terminate the interview. He threatened not to allow the witness to provide documentation as requested by investigators and contacted witnesses prior to our interview of them to, in my opinion, create the story.

Finally and most troubling was his threat to have my investigators charged merely for doing their duty in an attempt, as I see it, to intimidate them into not proceeding further. This series of events illustrates what may happen when senior government officials veer from the course of ethical behavior, skirt the edges, and act in a manner that is not in the Department's best interest.

There were breakdowns in communication and in responsibility. The conduct of several individuals ultimately resulted in the Deputy Secretary being misled, embarrassed, and ill-served. In particular, Mr. Minberg's obligation to exercise sound ethical judgment and to avoid violating well-established HUD policy was miti-

gated by his eagerness to be "more aggressive" with regard to lobbying.

This concludes my oral presentation into the investigation regarding the subcommittees' referral. I want to thank the subcommittee for your continued interest in our oversight work and our efforts to assist the Department in maintaining an adherence to ethical behavior. I am happy to answer any questions you may have.

[The prepared statement of Inspector General Montoya can be found on page 26 of the appendix.]

Chairman MCHENRY. Thank you, Mr. Montoya. I will now recognize myself for 5 minutes. Inspector General Montoya, did the Deputy Secretary, Maurice Jones, appear to violate Federal law that prohibits Federal officials, including Executive Branch officials, from forcing citizens to engage in political activity?

Mr. MONTOKA. By the technical definition of the term, sir, yes, but I would like to add that I don't believe he knowingly or intentionally did that. I think it fell to the shoulders of those who were advising him, sir.

Chairman MCHENRY. Those who were advising him. Was Mr. Minberg one of those advising him?

Mr. MONTOKA. Yes sir, he was.

Chairman MCHENRY. Okay. Now about Mr. Minberg, in your report you detail it as a condition providing a list of recipients of this e-mail, which you say is around 1,000 people. Mr. Minberg asked your office to withhold this information from the House Financial Services Committee. Is that correct?

Mr. MONTOKA. That is correct, sir.

Chairman MCHENRY. Okay. And further, he reached out to White House Counsel and stated this to your investigators. Did he not?

Mr. MONTOKA. I believe the reason he reached out to the White House Counsel was more in keeping with whether HUD could have an attorney present during our interview of witnesses.

Chairman MCHENRY. Okay. So not about this, but in reaction to your investigation?

Mr. MONTOKA. Correct, sir.

Chairman MCHENRY. Okay. Is that a normal protocol for HUD to have legal counsel, political appointees in with your interviewers?

Mr. MONTOKA. It is not normal protocol for the Department to have an attorney present. Certainly, if the witness had wanted their own personal attorney, I would have allowed it. But in this case it was HUD's attorneys who wanted to be in the interview, for all intents and purposes to hear what we were investigating. That would be inappropriate.

Chairman MCHENRY. You also outline that before they reached out to the White House Counsel on this matter of HUD legal counsel being in these interviews, they also reached out to the Department of Justice about this matter, did they not?

Mr. MONTOKA. Correct, sir. And I think they reached out to the Department of Justice first. Again, their attempt was to try to get their attorney into our interviews.

Chairman MCHENRY. Okay. And who in the Office of Legal Counsel contacted the Department of Justice?

Mr. MONTTOYA. I believe the individual who would have contacted the Department of Justice was Henry Shi. I think he is a Special Assistant to the General Counsel.

Chairman MCHENRY. Okay. In terms of the list of recipients of this e-mail, this lobbying e-mail that is the issue at point here, Mr. Minberg demanded that you withhold this information from Congress. And in particular, his language was, he asked that you not provide the list of recipients to "Republicans." Is that correct?

Mr. MONTTOYA. That is correct.

Chairman MCHENRY. Okay. Would you provide that list to both Republicans and Democrats on the House Financial Services Committee?

Mr. MONTTOYA. As an official request from the chairman, sir, I believe I can do that, yes, sir.

Chairman MCHENRY. Okay. I would make that an official request of this subcommittee chairman—

Mr. MONTTOYA. Yes, sir.

Chairman MCHENRY. —that you provide that information to us.

Mr. MONTTOYA. Yes, sir.

Chairman MCHENRY. Okay.

Mr. MONTTOYA. If I may ask, it was my understanding that HUD was in the process of providing that information. Sir, may I ask if they have not done so?

Chairman MCHENRY. HUD is in the process of doing a number of responses to committee inquiries, let's say insufficiently and very slowly, as we found it seems to be a practice of this Administration to do that in a way that I have not previously experienced in my 10 years in Washington.

Furthermore, I would also like to ask you, in your prepared testimony and in your report, you describe how Mr. Minberg attempted to obstruct your investigation and convince your staff to withhold information from Congress.

Was Mr. Minberg involved in any other activities prior to the July 31st e-mail which, in your view, impeded inquiries originating from your office or from Congress?

Mr. MONTTOYA. We had an occasion previously where three committees had independently asked us to look at a matter with regards to allegations that the Department was keeping witnesses from speaking to it. I believe the committees were the House Committee on Oversight and Government Reform, the House Committee on the Judiciary, and the Senate Committee on the Judiciary. All three had sent me a joint letter asking that we look into that matter.

As it turned out, there was no basis to the allegation. We did not find that the Department was, in fact, holding witnesses back from Congress. So in that particular case, sir, it didn't pan out, but that was one that was mentioned as having a concern over.

Chairman MCHENRY. Okay. Finally, your office referred its findings to HUD so they could consider whether it was appropriate to take administrative action against the individuals in your report. To your knowledge, have they imposed any disciplinary actions?

Mr. MONTROYA. No, sir. To my knowledge, they have not, and I would suspect that they might actually wait until GAO and the Office of Special Counsel opine, but again, I am not clear on that.

Chairman MCHENRY. And you made referrals to both?

Mr. MONTROYA. Yes, sir, we made the referrals to both of them.

Chairman MCHENRY. Okay. Thank you for your service.

We will now recognize Mrs. Maloney for 5 minutes.

Mrs. MALONEY. Thank you very much, Mr. Chairman, and Mr. Ranking Member. Mr. Montoya, I want to thank you for your thorough investigation of this matter, and we truly do need more Inspectors General like you. The findings that you made, to say the least, are a cause for great concern. And as we wait for all the facts and information about this incident to come to light, so that we can have a better understanding of how this has happened and how we can prevent it from happening again.

And this includes responses from HUD, the Government Accountability Office, and the Department of Justice, but I would like to state that this report brings to light important issues and information relevant to every administrative agency and regulator, ensuring there is an appropriate and proper effort to educate and train staff on ethics and lobbying policies.

But I specifically would like to ask you, you said that the Justice Department declined to open a criminal investigation, so there won't be any criminal penalties. What remedies do you have available in this case, and what are the possible penalties in an administrative proceeding?

Mr. MONTROYA. Yes, ma'am. Thank you for the question. With regards to DOJ's findings and the remedies, we certainly will be working with the Secretary to help with some recommendations. I understand that he has already, very swiftly after this came to light, included additional ethics training for his staff. I think they have already done three.

With regards to the administrative action, that really is up to the Department, ma'am. I couldn't answer what they might be thinking or what the level of administrative action could be. It could range from really nothing to firing, quite frankly, is the full range, but that would not be something in which we would engage. That is really a Department decision.

Mrs. MALONEY. Okay. In your opinion, are the penalties available in the administrative proceedings sufficient?

Mr. MONTROYA. Yes. I believe that the range of administrative—including firing, are certainly available to them and certainly, I think, severe enough. With regards to GAO, depending on their findings, they can certainly levee a civil penalty that would require potential payment for the expense of this grass-roots lobbying campaign.

Mrs. MALONEY. Your report says that the lobbying e-mail was inadvertently sent to 46 HUD employees. Did you interview any of these HUD employees who received the e-mail about whether they felt that they had been coerced into political activities?

Mr. MONTROYA. Yes, ma'am. To clarify, I want to make sure that we understand it was inadvertent on the part of the Deputy Secretary. I don't believe it was inadvertent on the part of those who

were preparing the e-mail and the recipient list. I believe it was their duty to have vetted this more appropriately.

With regards to interviewing those individuals, no ma'am, we did not.

Mrs. MALONEY. I hope that these types of incidents don't happen again, and we are all committed to working with you and other agencies to make sure that these incidents don't happen again, and I look forward to hearing from HUD so that we can better understand what you are doing to ensure that these types of problems do not continue.

So I will ask you, right now, what are you doing to ensure that this does not happen again?

Mr. MONTROYA. I have had several discussions with the Secretary, ma'am. I can tell you he was none too pleased and none too happy. I think quite frankly he was disappointed in his staff. He has committed to me to work with me to try to fix this and to ensure it doesn't happen again. I am confident that, based on my meetings with him, he is going to do that.

We will certainly be providing him with some recommendations later, I believe, on the set-up of the ethics program and how they can do a better job with that.

Mrs. MALONEY. What are the recommendations that you will be supplying him? Can you give us a preview?

Mr. MONTROYA. I don't know that we have actually come to a complete determination on that. I think we want to wait to see what GAO and OSC come up with to include that in any recommendations, so I don't want to get too far ahead of myself. But certainly, it is an area we are considering—it is certainly an area where I told him we would offer him some recommendations.

Mrs. MALONEY. My time has expired. Thank you.

Mr. MONTROYA. Thank you, ma'am.

Chairman MCHENRY. I thank my colleague, and we will now recognize Mr. Barr of Kentucky for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. Mr. Montoya, did your investigation reveal the identity of the individuals in the White House Counsel's Office with whom Mr. Minberg communicated?

Mr. MONTROYA. No, sir, we did not ask that question.

Mr. BARR. Can you amplify the details of your investigation's confirmation that there was a communication between Mr. Minberg and the Office of the White House Counsel?

Mr. MONTROYA. I believe it was several attorneys who advised my legal staff at the time that they had reached out not only to Justice but to the White House Legal Counsel on their ability to allow one of their attorneys to sit in with the witness interviews.

To the extent that is—I believe that was the only extent that they reached out to the White House, and that was proprietary of them not being able to have their attorneys in our witness interviews. I don't believe it had to do, as far as I know, with the recipient list and whether that should come to Congress or not.

Mr. BARR. So as far as you know, from your investigation, the only communication between the White House Counsel's Office and Mr. Minberg related to his participation in witness interviews with the IG?

Mr. MONTROYA. Not necessarily his, but whether the Office of General Counsel could have an attorney sit in on our interviews.

Mr. BARR. Were there any additional communications that you are aware of between White House Counsel or any White House official and Mr. Minckberg, relating to his activities?

Mr. MONTROYA. No, sir, I am not aware of any others.

Mr. BARR. In following the last line of questioning, are you aware of any disciplinary proceedings that have been initiated at all, administratively within the Department relating to the conduct of Mr. Minckberg?

Mr. MONTROYA. No, sir, I don't believe any administrative action has been taken—

Mr. BARR. So at this point, there have been no ramifications for Mr. Minckberg's behavior?

Mr. MONTROYA. No, sir. But in fairness I believe that they may, in fact, be waiting for GAO's opinion and OSC's opinion, which I believe would actually maybe have some bearing on whatever action would be taken.

Mr. BARR. And did you officially refer your report to the Justice Department or was it just made available?

Mr. MONTROYA. We actually went there and briefed them on it. I believe we may have provided them some written documentation. At the time, we didn't have a full report. It was really more a case summary, and we actually go visit with them and brief them on the matter.

Mr. BARR. Okay. And did Justice communicate to you that they would decline any prosecution or seeking to impanel a grand jury or anything of that nature?

Mr. MONTROYA. No. They advised us they would decline, but just to be clear, part of the reason that the Department declined was really the confusion and the lack of memory by a lot of the witnesses. When DOJ decides to take on a case, you obviously want strong witnesses who are going to remember what happened.

And in this particular case, there seems to be a lot of memory lapses from almost all of our witnesses, so that, I think, played into their role for declining.

Mr. BARR. So lack of clear memories is the principal justification for declining to prosecute, is that correct?

Mr. MONTROYA. I believe it is certainly one of the factors. I don't know that you could make a case if you don't have witnesses who can remember what in fact happened.

Mr. BARR. Did Mr. Minckberg contact any HUD employee to discuss the July 31st e-mail after your office began its investigation?

Mr. MONTROYA. Yes, sir. He actually had several contacts with attorneys that we were planning to interview. And it is my understanding that the contact was on the premise of, I remember my conversation this way, how do you remember it. I remember saying this to you. You remember saying this to me. Things that as an investigator I think raised a red flag and indicated to us that this is part of a subtle way of trying to create what the story line would be.

Mr. BARR. I recognize that Justice has declined to prosecute, but you have, obviously, a background in Federal legal prosecutorial

work. In your judgment, did Mr. Minckberg's actions potentially violate Federal law?

Mr. MONTROYA. We certainly felt that there was enough there to present it to the Department of Justice, sir, but I wouldn't certainly second-guess them on their opinions with regards to taking a matter criminally.

Mr. BARR. Let me ask this: If you were a lawyer at Justice presented with these same facts, do you think it would justify impaneling a grand jury?

Mr. MONTROYA. I'm sorry. I don't think I would be able to answer that question. I think as I sit here as the IG, I would rather maintain my role as the IG and not try to figure out what I would have done if I was in DOJ.

Mr. BARR. Thank you. I yield back.

Chairman MCHENRY. Thank you.

I now recognize Mrs. Beatty for 5 minutes.

Mrs. BEATTY. Thank you, Chairman McHenry and Ranking Member Green, and again, to our witness, thank you for being here.

In your testimony, you used words like, "veer from the course or skirt around the edges," acting in a manner that could not be in the best interest of government. Reading those words it made me think of the question, do you think there was a specific culture or expectation within HUD that this type of behavior could be tolerated?

Because, also, if you look to page two in your testimony, you talk about Mr. Minckberg in his other position with HUD being part of the General Counsel developing language that would prohibit employees from doing what appears to be the same thing that he did do in this. So was it in the culture, people learn it? These are learned scholars. These are attorneys. Do you think there was a culture of doing this?

Mr. MONTROYA. Ma'am, I don't believe that there is a culture. Most, if not all, HUD employees I met are very well-intentioned, very dedicated, very ethical. Do I believe that at least two individuals failed to demonstrate a model of ethical behavior? Behavior that would reinforce ethical guidelines in the Department? Yes, ma'am, I am concerned about that.

I am concerned that the publicity this is getting would create ethical lapses in the Department because these senior officials did so themselves.

Mrs. BEATTY. So if that is the case, can you tell me what guidance you think that Mr. Minckberg should have received and from whom when he was making his decisions to allegedly engage in lobbying activity?

Mr. MONTROYA. Ma'am, what our investigation determined was Mr. Minckberg himself was one of the drafters of a 2011 memorandum for Senate confirmation of political appointees and it confirmed individuals not lobbying Congress. This was an internal policy to HUD that they were not to lobby Congress on pending matters.

So he was very well versed with the policy. In February of 2013, 5 months before this e-mail, he had asked a question of the ethics officials whether, in essence, they could be more aggressive in the

lobbying. The answer back to him was that, again, they had a standing policy that they were not to engage in grass-roots lobbying by Presidential appointees. So, he was well knowledgeable of the internal policy.

Mrs. BEATTY. Has your Office worked in the past, or presently, to coordinate with HUD's General Counsel or Ethics Counsel to develop guidance for personnel practices? If so, how involved has your Office been in creating such policies, and if not, why not?

Mr. MONTROYA. No, ma'am, we generally don't do that. That is generally something the Department does for itself. In fact, for a while, our ethics program ran through theirs. I opted shortly after I arrived to create my own ethics shop with my own ethics officer. I wanted some independence from the Department.

As the agencies ethics official, the General Counsel will be responsible for setting those policies and, in fact, she signed all the policies that were in place at the time this occurred.

Mrs. BEATTY. Do you think we need any new policies? Is there anything that Congress can do, or do you think this was just an isolated case?

Mr. MONTROYA. I think this was just isolated. I think it was an aberration. I think it was pretty much one person who decided to act on his own, if you will. I don't know that we need to strengthen the ethics laws, m'aam.

Mrs. BEATTY. Let me thank you for your testimony and the due diligence you are doing to this, and also, thank you for the clarification that to the best of your knowledge, there was no connection with attorneys in the Presidents' office to this. And let me also say to you that I agree with you that this certainly puts the Deputy Secretary and the Secretary in a very embarrassing position.

But also, I have a concern about the programs that are mentioned here in the two House bills they were lobbying for, to make sure that there is no black eye to those programs that serve the people who need these programs because those programs have been stellar in my district and in districts across the country. So again, thank you, Mr. Chairman, and I yield back.

Mr. MONTROYA. Thank you, m'aam.

Chairman MCHENRY. I appreciate my colleague. Thank you for your comments. The other question was about the obstruction, which is a different matter, and we all should have deep concern about that.

We will now recognize Mr. Duffy for 5 minutes.

Mr. DUFFY. Thank you, Mr. Chairman. In no way do I want this question to undermine the importance of this hearing, but the issue that we are dealing with, an e-mail that was sent out and intended to lobby, would you agree is probably not the most serious violation that an agency could undergo. Though it can be criminal, but on the scope, on the spectrum, not the most serious. Right?

Mr. MONTROYA. I think I would answer that by saying that in the Deputy Secretary's role, he certainly has the legal ability to lobby, absolutely.

Mr. DUFFY. I would agree with you, but I guess my point is that there is not a great deal of outrage here about Mr. Jones. I think people can make mistakes. I do believe that, and this very well could have been a mistake.

What angers me is not what could have been a mistake. What angers me is when you investigate what could have been a mistake, what could have been a crime, the kind of push-back that you get on this level of violation, this level of an investigation. The terms of individuals at HUD being aggressive with the investigators, obstructing, uncooperative.

And I guess what I draw from this is if they will obstruct, if they will be uncooperative at this level, if there are more serious issues taking place in HUD or any other Federal agency, to what lengths will they go to obstruct Congress and the American people from knowing the behavior of this Administration?

I guess I would throw to you, Mr. Montoya, any insight there?

Mr. MONTOKA. Sure. I think what I would like to tell you is when I first committed to the chairman that I thought I could get this done in 30 days, I fully expected that I could do that. It turned out after a very quick review that this could have easily been just an administrative case. So what happened was this white-wash sort of mentality of circle the wagons and let's see if we can keep the IG from asking the questions.

Really, what happened was the Department or at least one individual made a Federal case out of what really ultimately turned out to be an administrative matter, to be quite frank with you.

Mr. DUFFY. And that is why we are here today. This really probably wouldn't have gone as far, but for the obstruction of individuals within HUD. And looking at Mr. Minberg and Mr. Constantine, these aren't low level guys, right?

Mr. MONTOKA. No, sir, they are not.

Mr. DUFFY. They are high-level guys. And when you talk about a culture within HUD, culture doesn't come from the bottom up, it comes from the top down. And when we talk about culture, it concerns me that at the top level, we have individuals like Mr. Minberg and Mr. Constantine who are partaking at a pretty aggressive level in obstructing your investigation.

Mr. MONTOKA. That is correct. And I will go back to my earlier statement where the fact that they are not modeling ethical behavior concerns me because that does, like you said, from the very top, have a very negative impact on a Department.

Mr. DUFFY. Do you know if Mr. Minberg is an attorney?

Mr. MONTOKA. Yes, sir, he is an attorney.

Mr. DUFFY. And so he has a law license then.

Mr. MONTOKA. Yes.

Mr. DUFFY. He studied law and passed the Bar somewhere?

Mr. MONTOKA. Yes, sir.

Mr. DUFFY. And Mr. Constantine similarly is an attorney, as well?

Mr. MONTOKA. Yes, sir, that is correct.

Mr. DUFFY. Do you know, have they had any action taken against their law licenses?

Mr. MONTOKA. No, sir, not to my knowledge, and that wouldn't be for us to refer. That would probably be something the Department would refer as part of their administrative action.

Mr. DUFFY. Is it your testimony that to your knowledge and belief, neither Mr. Minberg nor Mr. Constantine have been disciplined by the Secretary?

Mr. MONTTOYA. Yes, sir. To date, they have not as far as I understand, but again I believe that they may in fact be waiting for GAO and OSC's opinion on the matter as they—is their conduct related to some of what we referred to those agencies.

Mr. DUFFY. They may, but there is nothing stopping the Secretary from taking action right now disciplining his high-ranking employees, is there?

Mr. MONTTOYA. No, sir. There would certainly be nothing to stop him if he cared to do so now.

Mr. DUFFY. And I think as many of us read the reports, it was shocking. We were shocked at their behavior, and that they would have not been disciplined as of yet, and frankly, that they still have their jobs is of great concern. And for me, it makes me believe that there is a culture of one, stonewalling on cooperativeness, but also, if you behave this way, you won't be disciplined. Actually, you will be protected. You will be coddled.

There will be no recourse from the Administration for you if you push back against Republicans from a committee that has the role of providing oversight of these agencies. With that, I yield back.

Chairman MCHENRY. Mr. Green will defer, so we will go to Mr. Rothfus for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman. And thank you, Mr. Montoya, for being here with us today. I just want to get a little bit better appreciation for this idea of Mr. Minberg going to the White House Counsel's Office. In your opinion, is it typical for a person at that level to reach out to the White House Counsel's Office on an issue like this?

Mr. MONTTOYA. I couldn't answer that. Certainly, it was not atypical for him to reach out—for someone to reach out to the Department of Justice asking a question about whether IGs, whether I was right or wrong in allowing their attorneys, but I couldn't answer the question about White House Counsel service. It is the first time it has come up.

Mr. ROTHFUS. As far as the process of Mr. Minberg, and where he was going, did he consult first with the HUD General Counsel's Office before reaching out to the White House Counsel's Office?

Mr. MONTTOYA. I don't know if it was Mr. Minberg who had actually reached out. I believe it might have been Henry Shi, a Special Assistant to the General Counsel, who actually reached out to the White House. I would have to clarify that, but I believe it was him. I don't know if he did or did not.

Mr. ROTHFUS. Did you investigate whether Mr. Minberg would have reached out to the White House, the liaison's office at HUD?

Mr. MONTTOYA. No, we did not, sir.

Mr. ROTHFUS. Your report names a number of additional employees besides Mr. Minberg and Maurice Jones: Peter Constantine; Jennifer Szubrowski; Francey Youngberg; and Jonathan Harwi. Were any of these individuals career employees at HUD?

Mr. MONTTOYA. I believe the only career employees at HUD were the administrative assistant to the Deputy Secretary, and Mr. Constantine, the ethics official. All the others were, I think, what we call schedule C political appointees.

Mr. ROTHFUS. Your report, on page 19, says that Mr. Minberg had said that his office had coordinated with the White House

Counsel and would need assurance that HUD OIG would not turn the recipients' list over to the Republicans on the committee. Was it your impression or understanding that the directive came from the White House Counsel's Office with respect to that, not turning the information over to Republicans on the congressional committee?

Mr. MONTROYA. No, I don't know that for sure, sir, but just to clarify—I was just handed a note by my staff—apparently, Mr. Minberg on one occasion did suggest to our agents that he did reach out to the White House on the issue of whether an attorney could be present during our interviews.

With regards to whether he reached out to the White House on whether they should disclose the recipient list or not, we have no information about that.

Mr. ROTHFUS. Again, your report said that his office had "coordinated with White House Counsel and would need assurance that HUD OIG would not turn the recipients' list over to the Republicans on the congressional committee."

It is your testimony that you don't know whether or not that directive came from the White House Counsel?

Mr. MONTROYA. No, we don't, sir.

Mr. ROTHFUS. Did you ask whether it did?

Mr. MONTROYA. I do not believe we did, sir. I think we just took him at face value of what he said.

Mr. ROTHFUS. Was there a feeling of fear amongst some of the HUD employees that you interviewed?

Mr. MONTROYA. I don't know that I could—that my agents would suggest to me there was this feeling of fear, to be honest with you. We certainly questioned why everybody seemed to have amnesia and why nobody could remember what otherwise was a one-time event. But with regards to fear, I am not sure.

I think the closest we ever got to anything like that was in our interviews of Mr. Constantine where he made reference to having to work with Mr. Minberg again once he left his acting role in the congressional intergovernmental relations and back into the office of General Counsel. We did press him on that a little bit, on whether that was some fear, and he never acknowledged that is what it was and gave us no real clarity.

Mr. ROTHFUS. Was it your impression that he felt intimidated?

Mr. MONTROYA. He never said that. I think, as a career law enforcement officer when I read that, I have to say that in my professional opinion, yes, I think there was some feeling like that.

Mr. ROTHFUS. Did any of the other HUD staff who were interviewed by your Office feel similar intimidation?

Mr. MONTROYA. No, I don't believe so. I don't think any of the others suggested anything like Mr. Constantine did.

Mr. ROTHFUS. Any opinion as to why Mr. Minberg's actions would have gone unchecked by his supervisors?

Mr. MONTROYA. We asked that question, sir, and I appreciate you asking, that is a very good question. The only thing, I think, we could come up with was that there was this sort of feeling that he had this license with some authority, if you will.

Just because of the active role he took in not only preparing this e-mail, being the catalyst of it, but quite frankly, also being the cat-

alyst for the change in HUD's internal policy with regards to ethics and the new policy that recently came out.

In his statement, he suggested to us that he had no involvement in re-writing the policy, if you will, after the fact, and yet all the other witnesses told us that he was very diligent and active in re-writing that policy. A policy that really is the responsibility of the ethics office; he is Congressional Affairs.

Mr. ROTHFUS. Thank you, Mr. Chairman. I yield back.

Chairman MCHENRY. Mr. Hultgren for 5 minutes.

Mr. HULTGREN. Thank you, Mr. Chairman. And Mr. Montoya, thank you very much for being here. A lot has been covered, but just to bring some clarity for myself, I wondered again, if you could discuss a little bit—if your Office interviewed HUD ethics attorney Peter Constantine while conducting its investigation and preparing this report. And what was Mr. Constantine's role in advising HUD regarding the ability of HUD officials to engage in grass-roots lobbying?

Mr. MONTOYA. As the ethics official, it would be my contention that his responsibility was to ensure that the advice he gave kept everybody in an ethical swim lane, if you will. I think the largest concern I have is that is the issue kept coming to him. Several conversations with Mr. Minberg, an e-mail request from Mr. Minberg, or he discusses the words, "more aggressive lobbying," and in the words, "Deputy Secretary and the Secretary."

It just seems to me that as the ethics official, that should have drawn a red flag to him, and I think as an attorney, as well, he had a responsibility to pin Mr. Minberg down to say, "Listen, if you are asking for an opinion, I expect you to give that to me in writing so I can formally respond to you."

I think he should have done more to protect ultimately what happened to the Deputy Secretary. I think he could have done more, in my opinion.

Mr. HULTGREN. How many times did your office interview Mr. Constantine?

Mr. MONTOYA. We interviewed him, if I can remember correctly, no less than 3 times, sir.

Mr. HULTGREN. And how would you characterize Mr. Constantine's responses to your Office's questions? Do you believe he was forthcoming with HUD OIG and that he provided HUD OIG with all relevant information?

Mr. MONTOYA. Oh, I can tell you almost every interview was different from the one before. I can tell you that when we pointedly asked him to provide us any documentation that he might have on Mr. Minberg asking about the aggressive lobbying, he did not do so. It wasn't until we confronted him with an e-mail that he had actually responded to Mr. Minberg on, just 5 months earlier on this issue, that he then said he didn't recall. It is ironic that all of his other staff attorneys had that memo and that they provided it to us. But he failed to do so.

Mr. HULTGREN. I am wondering, getting back to Mr. Minberg, in your report you have a statement, "He was less than forthcoming regarding his involvement with preparation and transition of that e-mail from July 31st." I wonder why you used those words, "less than forthcoming?" Was Mr. Minberg attempting to conceal

his involvement in the project, is that kind of what was intended by the language he used?

Mr. MONTROYA. Yes, sir. I think he was trying to conceal just how aggressive and how involved he was, and quite frankly, our investigation suggests that he was the catalyst for this new sort of position that the Department was trying to undertake.

Mr. HULTGREN. You also used that same language, "less than forthcoming regarding his knowledge of the anti-lobbying act and his knowledge of related HUD policies against lobbying."

Why was this the case? Why did you specifically, in those circumstances, believe he was less than forthcoming?

Mr. MONTROYA. I think in several interviews, he claimed he either didn't know or couldn't remember about the policy, and yet he wrote one of the policies. In fact, he helped to write one of the policies that specifically dealt with Presidentially-appointed, Senate-confirmed individuals, the position the Deputy Secretary held. And quite frankly, included in that is the language that past Presidentially-appointed and Senate-confirmed individuals would not lobby Congress on pending legislation.

He had sent the e-mail or the question to the ethics office in February of 2013. He was certainly familiar with that. And so, those are two things that I can remember off the top of my head that suggested to us that he was not forthcoming.

Mr. HULTGREN. Thank you very much, Mr. Chairman. I have completed my questions, and I would be happy to yield back my time to the chairman actually—

Chairman MCHENRY. I certainly appreciate my colleague yielding back to me—or yielding to me. I do want to ask about one thing. HUD had an internal policy regarding grass-roots lobbying at the time of the July 31st e-mail, did they not?

Mr. MONTROYA. Yes, sir, they did.

Chairman MCHENRY. And later, after my request of you, they revised that policy, did they not?

Mr. MONTROYA. It is my understanding that shortly after that, they pulled down their ethics guidelines from their Web servers and started redrafting the new policy, a policy that for all intents and purposes would have not restricted or prohibited the activity that they had just undertaken.

Chairman MCHENRY. Okay. But at the time of the e-mail, the e-mail violated HUD's policy, which existed at that time?

Mr. MONTROYA. That is correct, sir—

Chairman MCHENRY. Furthermore, when Mr. Minberg and the Department responded to my question about this, they said it did not violate the HUD policy because they had revised it after. So the question about Mr. Minberg obstructing your investigation, his communication with Congress was, let's just say, a bit clouded and white-washed as well.

My time has expired, but I will come back to this point in a moment.

I now recognize Mr. Green, the ranking member of the subcommittee, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Mr. Montoya, I would like to thank you on behalf of a good many people. The people who work over at HUD, who are not associated with this, I want to

thank you for not painting with a broad brush. I want to thank you for taking a sober approach to this investigation. I think it is imperative that when these kinds of investigations are conducted, we approach it looking for facts as opposed to making allegations that can sometimes tarnish people for life. So I greatly appreciate the approach that you have taken, and I want to thank you on behalf of a good many people.

I also would like to acknowledge and reiterate that you believe the range of administrative penalties are sufficient. I think that was appropriate for you to say because there are persons who could conclude that much more than the administrative penalties would be merited.

But I believe that you have stated clearly that given the range, which includes firing, those penalties are sufficient. You have indicated that the GAO and OSC have not weighed in and that it is not inappropriate for HUD to receive all of the intelligence before making a decision as to what course of conduct to pursue. This makes sense.

And I just appreciate your acknowledging these things because it helps us to tie up a lot of loose ends such that we don't leave with the allegations exceeding the conclusions that have been reached.

And finally, I want to thank you for indicating, and I am going to have you indicate again, I believe that you have not found in your report that there was involvement of the White House. Is that a fair statement?

Mr. MONTTOYA. I'm sorry. Will you repeat that, sir?

Mr. GREEN. You have not found that there is involvement with reference to the White House in this?

Mr. MONTTOYA. No, sir.

Mr. GREEN. That is a term that is broadly used sometimes and just the statement can sometimes create an image of something that is not in any way correct. So your position is, after your report, a sober report, that there is no involvement of the White House. You have not found anything in this report that would indicate this. Is that a fair statement?

Mr. MONTTOYA. That is a fair statement. There is no involvement.

Mr. GREEN. All right. With that said, Mr. Chairman, I am going to yield back the balance of my time, and I look forward to our second round.

Chairman MCHENRY. And the first round being ended with all Members' time being expired, we will now enter into a second round, and I ask unanimous consent that we limit questioning to 5 minutes per side. Without objection, it is so ordered.

I will begin by recognizing myself for 5 minutes.

Mr. Montoya, the individuals in charge, in questioning are Mr. Minberg, in particular. Is he a civil servant with civil servant protections?

Mr. MONTTOYA. As a Schedule C, sir—

Chairman MCHENRY. A Schedule C? Does a Schedule C political appointee have the same protections that career civil servants have in terms of hiring and firing?

Mr. MONTTOYA. I don't know, sir. I would have to get back to you on that. That is a good question, but I don't know if I can answer that clearly for you.

Chairman MCHENRY. They can be fired at any time and they are Presidential appointees, so just my understanding—

Mr. MONTTOYA. But I want to make sure I am clear.

Chairman MCHENRY. Right. So at this point, the Secretary could fire Mr. Minberg and have him out the door by the close of business? Now let me ask you, if someone on your staff committed the acts that Mr. Minberg did, would you take disciplinary action?

Mr. MONTTOYA. I think I prefer to maintain sort of an independent objectivity here, sir, regarding that answer.

Chairman MCHENRY. Okay. I will withdraw that question then. Now on page 20 of your report—I just want to go through this because it is very important—there is an interview that you are having with a witness. Mr. Minberg inserts himself into this interview and asks the person, tells the person that they should not speak with you. Is that correct? Your investigators?

Mr. MONTTOYA. He indicates to our investigators that he would instruct the individual not to speak to us.

Chairman MCHENRY. Okay. And your investigator told Mr. Minberg—

Mr. MONTTOYA. Ultimately, we told them it potentially could be an obstruction of our investigation.

Chairman MCHENRY. Okay. At which point—and this is in your report on page 20—Mr. Minberg stated that if he was charged with obstruction of justice, he would ensure that the investigators were charged, as well, based on their “inappropriate actions.”

Was that a threat? Did your investigators view that as a threat?

Mr. MONTTOYA. Certainly, I think they could have viewed it as a veiled threat. We looked at it more as a way to keep them from investigating further. So I guess in that regard, it could be a veiled threat.

Chairman MCHENRY. Okay. A veiled threat. So is this pretty standard? You have been doing this for how many years? In an investigative function?

Mr. MONTTOYA. In the IG function, a good 15 years—

Chairman MCHENRY. Fifteen, okay—

Mr. MONTTOYA. This is the first time I have seen something from that level of an employee to an investigator. It did prompt an immediate phone call from me to the General Counsel, that I would not have that—

Chairman MCHENRY. The General Counsel. And who was the General Counsel?

Mr. MONTTOYA. Helen Kanovsky.

Chairman MCHENRY. Helen Kanovsky, who is now the acting Deputy Secretary?

Mr. MONTTOYA. That is correct, sir.

Chairman MCHENRY. Okay. Did she know about HUD's staff effort to get the Department of Justice and the White House Counsel involved in your investigation?

Mr. MONTTOYA. Yes, sir. I believe she was aware of those calls.

Chairman MCHENRY. Okay. In order to—which goes back to this question about threats and obstruction of justice related to that.

And so at a time of some very questionable activity, she has received a promotion. Also on page 20 of your report, I just want to outline, midway, fourth paragraph down on page 20, "Additionally, after receipt of a separate committee request to HUD, Minberg appears to have taken steps to conceal or cloud the fact that the July 31st e-mail communication violated HUD restrictions on lobbying by Federal employees which was in place at that time."

"When he spearheaded the removal of HUD's internal policy from the—basically the HUD Web site, this occurred 1 week after receiving the committees' letter with the stated explanation that the various policies were confusing."

It is very interesting because this one individual took it upon himself to go to extraordinary lengths to obscure from Congress the policies of HUD in place at the time, and furthermore to impede your actions and your investigators' actions. Is that correct?

Mr. MONTROYA. That is correct, and I would add that there were a number of attorneys in the Office of Ethics who did not believe that policy was confusing.

Chairman MCHENRY. Okay. Now additionally, about Maurice Jones, this was his e-mail under his name coming from his e-mail address? And you stated that, in essence, he got bad advice. Was that—

Mr. MONTROYA. Since you give me the opportunity, I want to make sure that we are clear. We found nothing in this investigation to suggest that the Deputy Secretary was either knowingly or intentionally involved in this sort of large grass-roots lobbying campaign that included 46 employees.

In fact, I think in our interview, he was surprised that it went out to so many people. Except for the—

Chairman MCHENRY. Perhaps mismanagement but not malfeasance?

Mr. MONTROYA. I don't know if I would even call it mismanagement. I think at the Deputy Secretary level, I certainly had countless meetings with him on any number of issues. He was always very engaged in matters. I think that, quite frankly, he was hoping and depending on his staff, certainly the head of Congressional Affairs and certainly the head of Ethics, to properly advise him. I think that is where the failure is here.

I don't know that I would want to throw it at his feet. We could all say he is ultimately responsible, but quite frankly, we found nothing in this that would suggest to us that it was his fault, *per se*.

Chairman MCHENRY. Okay. Now the question is about the obstruction piece.

Mr. MONTROYA. Right.

Chairman MCHENRY. Is that correct? Is it just Mr. Minberg involved in that?

Mr. MONTROYA. It is just Mr. Minberg with regards to us having to suggest to him that his actions would potentially result in an obstruction matter. He was the only one with regard to that.

Chairman MCHENRY. Okay. Thank you for clarifying that. I did want to give you the opportunity to do that. With that, I ask unanimous consent—I took 6½ minutes, so I will ask unanimous consent

that the ranking member can control 6½ minutes. Without objection, it is so ordered.

Mr. GREEN. Thank you, Mr. Chairman. Let's continue with the report and let's move to page 23, which has at the bottom of the page an area titled, "Disposition of HUD OIG Report of Investigation." And what I would like to do, Mr. Montoya, is simply go through the disposition because the conclusions are also things that you support in your report. And the first deals with Deputy Secretary Jones, and you recently spoke of his acting with a lack of malice aforethought, which means that he didn't with intentionality do any of these acts, that he was receiving advice and he was acting.

But as to Mr. Jones, the Deputy Secretary, DOJ determined that there was nothing in the material warranting the opening of a criminal investigation, and you have indicated as much in your report. Is that a fair statement?

Mr. MONTOKA. Yes, sir, that is correct.

Mr. GREEN. All right. Let's move on now to some other persons. Minberg, Constantine, this sounds like a law firm, by the way, Minberg, Constantine, Szubrowski, Youngberg and Harwi. DOJ determined that there was nothing in the—and the writing is small and my eyes are old—material warranting the opening of a criminal investigation on November 25, 2013. DOJ declined further review of this matter. Is that a true and accurate statement?

Mr. MONTOKA. That is correct, sir.

Mr. GREEN. All right. Moving on to the Federal appropriations law. You have forwarded your report to GAO for its use in responding. Is that a fair statement, sir?

Mr. MONTOKA. Yes, sir, with regards to any violation of Federal appropriations law.

Mr. GREEN. Exactly. And as to Deputy Secretary Jones, you have provided a report to the Office of Special Counsel for use in determining whether there was a violation. Is that a fair statement?

Mr. MONTOKA. Of a prohibitive personal practice? Yes, sir.

Mr. GREEN. Okay. And finally, I think the last 14 words of your report are important and I will read the last 14 words. They are, "This report was forwarded to the HUD Secretary for any administrative actions deemed appropriate." And you have concluded that administrative actions are a fair remedy with reference to this report.

Is that a fair statement?

Mr. MONTOKA. I certainly can't speak for GAO or OSC. With regards to our report, administrative actions, yes, sir.

Mr. GREEN. Yes, sir. As to your report? And you stand by your report?

Mr. MONTOKA. Yes, sir, I do.

Mr. GREEN. Okay. I thank you again, and I yield back the balance of my time.

Mr. MONTOKA. Thank you, sir.

Chairman MCHENRY. I thank the ranking member, and I would advise the ranking member that I will be sending a letter this afternoon asking for the Secretary of HUD to come before us to explain what actions and remedies he has taken. And I would gladly welcome the ranking member in joining me in that request.

Mr. GREEN. I will look forward to perusing the document and making a decision after having the benefit of a perusal.

Chairman MCHENRY. I thank the ranking member, and I would certainly take his legal advice as a career judge, and Texas makes a different brand of judges—and our Texas witness would say that, I'm sure.

This is Mr. Montoya's second appearance before our subcommittee, and he has appeared before Congress multiple times, so thank you, again, for your testimony.

And without objection, I would just take a moment of personal privilege to thank the Inspector General for his career of service in our government and for steadfast work and making sure that these important programs within your purview are well-executed and the taxpayer dollars are preserved and the delivery is actually done. And so, I thank the Inspector General for that.

Mr. MONTOYA. Thank you, sir, for your kind words.

Chairman MCHENRY. Thank you.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place his responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And without objection, the hearing is now adjourned.

[Whereupon, at 11:18 a.m., the hearing was adjourned.]

A P P E N D I X

February 26, 2014

Testimony before the U.S. House of Representatives
Committee on Financial Services
Subcommittee on Oversight and Investigations

“Investigation of HUD Lobbying Activities”



Testimony of
The Honorable David A. Montoya
Inspector General
Office of Inspector General
U.S. Department of Housing and Urban Development

February 26, 2014
10:00 a.m., Rayburn House Office Building, Room 2128

Chairman McHenry, Ranking Member Green, and Members of the Subcommittee, I am David A. Montoya, Inspector General of the U.S. Department of Housing and Urban Development (HUD). Thank you for the opportunity to testify regarding our investigation of HUD lobbying activities.

The HUD Office of Inspector General (OIG) is one of the original 12 Inspectors General authorized under the Inspector General Act of 1978. The OIG strives to make a difference in HUD's performance and accountability. The OIG is committed to its statutory mission of detecting waste, fraud, abuse, and mismanagement as well as promoting the effectiveness and efficiency of government operations. While organizationally located within the Department, the OIG operates independently with separate budget authority. This independence and our impartiality are imperative and allow for clear and objective reporting to the Secretary and to the Congress.

The HUD-OIG received a request dated August 28, 2013 from Representative Patrick McHenry, Chairman, U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight and Investigations (Subcommittee) regarding an e-mail communication sent by former HUD Deputy Secretary Maurice Jones on July 31, 2013. The e-mail communication was addressed to "friends and colleagues" and called on the recipients to contact specific U.S. Senators and encourage them to vote in favor of procedural motions to advance Senate consideration of S. 1243, legislation making appropriations for fiscal year 2014 for the Department of Transportation, HUD, and Related Agencies. At the time, this matter was pending before Congress. The e-mail communication urged recipients to oppose certain amendments and suggested that recipients encourage named Senators to support final passage of the bill. The Subcommittee asked HUD-OIG to thoroughly investigate this matter and advise the Subcommittee whether HUD's actions violated any federal law.

Also on August 28, 2013, the Subcommittee sent a letter to the Government Accountability Office (GAO), requesting that GAO's Office of the General Counsel investigate the sending of the above referenced e-mail communication and determine if any appropriations laws were violated. The Subcommittee requested GAO issue a formal opinion on this matter. GAO deferred action on that request, pending completion of the HUD-OIG investigation. Accordingly, we have forwarded our completed investigation to GAO for their use in responding to the Subcommittee's request. Therefore, our conclusions with respect to HUD's compliance with federal appropriations laws are preliminary, pending GAO's review and determination.

The facts of our investigation were reviewed with the Department of Justice (DOJ). DOJ declined to open a criminal investigation into this matter and deferred to HUD-OIG to refer the matter to the Department for any administrative action it deemed appropriate.

Legal Restrictions and HUD's Anti-Lobbying Policy

The primary statute pertaining to lobbying by federal employees is commonly known as the Anti-Lobbying Act. This Act restricts career federal officials from lobbying Congress, particularly with respect to engaging in grass roots activities aimed at influencing pending legislation. This law does not apply to the lobbying activities undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet

members within their areas of responsibility, and other Presidentially Appointed, Senate Confirmed (PAS) officials.

In addition to the Anti-Lobbying Act, there are additional areas of restrictions on lobbying Congress by federal personnel, as well as by non-federal personnel who work for organizations that receive federal funds. Congress generally includes riders to the annual appropriations bills that prohibit federal personnel from engaging in certain types of lobbying activities, and that generally apply as well to non-federal entities that receive federally appropriated funds. The riders typically include language that restricts the use of appropriated funds for publicity or propaganda purposes directed at legislation pending before Congress. As an appropriations measure, these provisions are subject to interpretation and enforcement by GAO. The Comptroller General has interpreted these restrictions to apply primarily to expenditures involving direct appeals addressed to the public suggesting that they contact their elected representatives and indicate their support of or opposition to pending legislation, i.e., appeals to members of the public urging them to contact their representatives to vote in a particular manner.

At the time the July 31, 2013 e-mail was drafted and sent, HUD's internal policy and guidance as contained in Restrictions on Lobbying by Federal Employees, dated July 6, 2011, prohibited any HUD employee (including PAS officials) from encouraging anyone to contact Congress in support of or in opposition to pending legislation. This policy, approved by HUD's Office of General Counsel (OGC) and published on HUD-OGC's internal webpage, stated:

PAS employees may not organize or encourage "grass roots" lobbying campaigns designed to urge others to pressure Members of Congress to support or oppose any pending legislation or appropriation. (Emphasis included).

The prohibition is raised again in the policy where it addresses permissible on-duty activities:

The anti-lobbying statute does not prohibit Department communications designed to inform the public about Administration or HUD positions, or to promote those positions, as long as the communication does not solicit pressure on Congress. (Emphasis added).

The Department may send unsolicited materials, such as press releases, fact sheets, copies of speeches, and similar materials, to persons and organizations that may be reasonably expected to have an interest in the subject matter. Such materials may not, however, urge the recipients to contact Members of Congress. (Emphasis added).

In addition to the policy in place for all employees, a separate memo from HUD's General Counsel Helen Kanovsky was addressed to PAS employees on June 21, 2011 regarding restrictions that PAS employees are subject to. It should be noted that our investigation determined Elliot Mincberg (Mincberg), then a Senior Counsel in HUD-OGC, helped to draft this policy. Specifically, the memo stated that Federal employees, including PAS employees are prohibited by the Consolidated Appropriations Act, 2010 from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation. The memo went on to discuss the types of activities that, permissible before legislation is introduced, would be prohibited after legislation is introduced. While this memo was written to caution PAS

employees while advocating for the HOME Investment Partnerships Program, the prohibitions described clearly pertained to any legislation.

HUD's Interest in Fiscal Year 2014 Funding Bills

HUD's internal policies regarding lobbying were long-standing and designed to create not only the appearance of ethical behavior but included actual guidelines to ensure ethical behavior with regard to lobbying by all employees of the Department including PAS officials. In spite of clear Departmental policies, which were rooted in statutory provisions, our investigation disclosed there was an interest on the part of Minberg, who at this time was HUD's General Deputy Assistant Secretary for Congressional and Intergovernmental Relations, for HUD to be "more aggressive" in its lobbying activities. In the events leading up to the July 31, 2013 e-mail, HUD was particularly focused on the ongoing Congressional deliberations regarding HUD's fiscal year 2014 appropriations bills. The Administration was "strongly" supporting the Senate funding bill (S. 1243) and "strongly" opposing the House bill (H.R. 2610), as reflected in two statements of policy issued by the Office of Management and Budget on July 22 and 23, 2013. It was this backdrop that appeared to motivate this employee to advocate a "more aggressive" lobbying posture. HUD's interest in this legislation is reflected in the July 31, 2013 e-mail in question which states in part:

The difference between the House and Senate 'marks' could not be more stark. The Senate bill provides over six billion dollars more in budget authority to HUD and its programs than the House bill H.R. 2610, which was also voted out of Committee on June 27. Put simply, the Senate bill supports HUD's core rental assistance, homeless, and block grant programs and makes key investments in critical, newer initiatives, including Choice Neighborhoods and the Sustainable Communities Initiative. In contrast, the House bill puts the vulnerable HUD assistance recipients at risk and eliminates ladders of opportunity for middle class Americans.

Our investigation disclosed that the decision to send the July 31, 2013 e-mail was a continuation of a series of "stakeholder calls" that Deputy Secretary Jones' office had been conducting. The Deputy Secretary in interviews described the e-mail as part of the process of informing stakeholders (individuals such as public and elected officials and others with an interest in HUD programs) about the status of HUD's appropriations and about current developments. Before the e-mail was sent, Minberg approached HUD's chief ethics attorney, Associate General Counsel, Office of the Deputy General Counsel for Ethics, Appeals and Personnel Law, Peter Constantine (Constantine) and generally discussed an interest in preparing correspondence in the area of lobbying that would be "more aggressive." While Constantine told Minberg that there was a "basis to do it," and that certain activities may be undertaken by individuals who occupy PAS positions, he also cautioned Minberg about prohibitions against certain activities by individuals in PAS positions where an appropriation is involved. Constantine stated that Minberg never mentioned the correspondence that was being contemplated was an e-mail communication, nor did HUD's general counsel review the actual e-mail before it was sent.

HUD Officials' Actions Created the Appearance of Impropriety

While our investigation did not result in criminal prosecution, it did discern an institutional failure to follow HUD's existing internal policies. HUD's actions display the appearance of impropriety and of ethical regressions. There were breakdowns in communication and in responsibility and a failure to adhere to existing policies and procedures. This led to placing the Department and its second highest ranking official, the Deputy Secretary, into an embarrassing situation, one that leaves an impression of lapses in judgment and in ethical decision-making.

As an action that involved adherence to statutorily defined prescriptions, the decision to send the e-mail should have been more fully vetted along with a more thorough review of its content and its list of recipients. For example, the Chief Ethics Attorney, Constantine was not sufficiently engaged in the process. We determined that Constantine had two short conversations with Mincborg, including one in a hallway, about Mincborg's desire to "be more aggressive in lobbying efforts." While Mincborg claimed these meetings to have been substantive, he did not produce specific correspondence to be reviewed. Mincborg stated that during these meetings he received approval from Constantine to "...be more aggressive in lobbying efforts." As an attorney who had previously been assigned to HUD-OGC, Mincborg should have been aware that brief general discussions do not equate to a legal review and should have been more diligent in following up with Constantine.

Constantine's version of the meetings differed from Mincborg's. Constantine stated he advised Mincborg that there was a "basis to do it," but not that it should be done. Constantine described this difference in interpretation as a confluence of misunderstanding and miscommunication as well as nuances within the Anti-Lobbying Act. Constantine's position was that his and Mincborg's understanding of earlier conversations were "not exactly the same." He surmised that Mincborg believed he had said "they could send" the correspondence, as opposed to there was a "basis to send" the correspondence. For his part, Constantine should have been aware that his informal advice could be misconstrued and should have asked Mincborg to request a more thorough legal review.

When he did see the e-mail after the fact, Constantine described being "taken aback" and struck by two things; first that the e-mail was certainly lobbying pending an appropriation and second, the e-mail was sent on behalf of the Deputy Secretary and not by the Deputy Secretary himself. According to Constantine, this was inappropriate and it should not have been sent by anyone other than the Deputy Secretary. Had a legal review of the e-mail been performed before it was sent, it may have prevented the violations reported in our investigation.

The lack of proper vetting was particularly evident when one examines the types of organizations represented on the list of e-mail recipients. During our investigation, witnesses consistently told us that the recipient list was a compilation of pre-existing e-mail lists maintained by different HUD officials and that the resulting merged list of recipients was not vetted or changed. As a result, the e-mail was also sent to 46 HUD employees. While we have no evidence that HUD employees were part of the targeted audience, the fact remains that HUD employees received an e-mail sent on behalf of the Deputy Secretary, asking in specific terms that they contact certain Senators to support S.1243. While evidence from our investigation indicates this was inadvertent on the part of the Deputy Secretary, the lack of due diligence by Mincborg, Constantine and

those preparing the recipient list may have caused the Deputy Secretary to commit a prohibited personnel practice and to violate federal law prohibiting an official from coercing a federal employee's political activities.

Finally, and equally problematic, was the fact that the e-mail was sent to individuals at organizations which receive HUD funding. Such organizations are generally prohibited from using federal funds to carry out certain lobbying activities. The e-mail asked these individuals to engage in activities that could violate federal law if federal funds were used to carry them out. The e-mail should have cautioned the recipients not to use any federal funds. Particularly noteworthy was the fact that one of the recipients, a large public housing authority, had recently been found by HUD-OIG to have violated federal requirements by using federal funds to carry out lobbying activities.

The Appearance that HUD Officials Changed Existing Policy in an Attempt to Legitimize Their Actions

As noted previously, HUD's anti-lobbying policy in effect at the time the July 31, 2013 e-mail was drafted and dispatched, did not allow PAS officials to suggest to client organizations that they urge or pressure members of Congress regarding any pending legislation or appropriation.

A separate policy memorandum to PAS employees addressed restrictions from using appropriated funds to encourage anyone to contact Congress in support of or in opposition to pending legislation. These restrictions for PAS employees were removed from the revised policy and replaced with a word of caution regarding grass-roots lobbying activity and a requirement that written materials proposed to be distributed as part of grass-roots lobbying activities be cleared by HUD-OGC in advance.

After receipt of a Subcommittee on Investigations and Oversight request to HUD for answers to a list of questions regarding the propriety of the e-mail transmission, Minberg leaves the impression that he took steps to conceal or cloud the fact that the July 31st e-mail violated HUD's existing internal anti-lobbying policy when he spearheaded the removal of that policy from HUD's internal web site a week after receiving the Subcommittee's letter. During our investigation, Minberg characterized his involvement in the removal and rewrite of the policy as "not a lot" and stated he was "not the author of the new policy." Minberg stated the rewrite of the policy was HUD-OGC's responsibility and the drafting of the new policy was done by HUD-OGC.

While the policy revision was a HUD-OGC responsibility, other witnesses indicated significant involvement on the part of Minberg in softening the previous policy in contrast to Minberg's recollection. Moreover, according to witnesses involved in this redraft effort, the HUD-OGC initially produced revisions to the policy that would have retained language restricting the use of appropriated funds to carry out grassroots lobbying activities. Witnesses consistently told HUD-OIG investigators that it was Minberg who insisted that HUD's policy should more closely reflect opinions issued in the past by other federal agencies, which have suggested that the appropriation riders do not apply to PAS officials, despite the fact that HUD had not chosen previously to endorse this perspective. The new policy was ultimately approved by HUD's General Counsel Helen Kanovsky.

Impediments to HUD-OIG's Investigation

During the course of our work, Mincborg interfered with the HUD-OIG investigation by interrupting and inserting himself into an on-going witness interview, threatening to terminate the interview, and not allowing the witness to provide documentation as requested by investigators. In particular, Mincborg said that before he would allow the release of the e-mail recipient list, he wanted assurance that HUD-OIG would not voluntarily turn over the list to Congress, unless, or until it was subpoenaed. He told the investigators that he had an institutional concern that Congress was trying to use its relationship with an Inspector General in an attempt to make an "end run" around HUD's administration, and Mincborg did not want the names of the e-mail recipients disclosed to Congress. After being informed that his actions could potentially constitute obstruction of justice and/or interference in an official HUD-OIG investigation, Mincborg threatened the investigating agents that he (Mincborg) would ensure the agents were charged as a result of their inappropriate actions. Mincborg never identified to the agents what those were.

Mincborg also attempted to impede HUD-OIG's investigation when he contacted HUD-OGC employees, prior to their interviews by investigators, to discuss anti-lobbying and their collective recollection of events. Mincborg was also less than forthcoming in regard to his involvement in the preparation and dissemination of the July 31st e-mail communication, his knowledge of the Anti-Lobbying Act, and his knowledge of HUD's internal policy governing the restrictions on lobbying by federal employees.

Finally, the investigation disclosed that Constantine was less than forthcoming by failing to clarify the specifics of the action discussed between he and Mincborg prior to the dispatch of the e-mail communication and withholding information pertinent to the investigation when questioned during multiple interviews with HUD-OIG investigators.

Conclusion

This series of events illustrate what may happen when senior government officials veer from the course of ethical decision-making, skirt the edges, and act in a manner that is not in the government's best interest. In particular, Mincborg's conduct resulted in the Deputy Secretary being misled, embarrassed and ill-served as well as his own staff. Mincborg's obligation to exercise sound ethical judgment and avoid violating well established departmental policy was mitigated by his interest in being "more aggressive" in regards to lobbying. More troubling was that Mincborg and other senior leaders, in actions shortly after receipt of the Congressional inquiry, chose to not only change the rules they appear to have violated but to also water them down when they realized the rules contradicted the path they wanted to pursue.