Congress of the United States

Washington, DC 20515

The Honorable Michael B. Mukasey
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

October 20, 2008

Dear Attorney General Mukasey:

As we write this letter, our Nation and the global economy confront a financial crisis of historic proportions. There appears to be sufficient evidence already on the public record to conclude that fraud, misfeasance and malfeasance in the mortgage and mortgage-backed securities markets lie at the root of this international crisis. The contagion spread by those responsible has placed our financial system on the brink, wiping out trillions of dollars in investments, retirement savings and other vital personal and institutional resources.

At the center of the troubles in the mortgage-related markets may lie a cluster of maladies that never should have taken hold – fraud and mismanagement at Fannie Mae and Freddie Mac, missed opportunities to rein in these Government Sponsored Enterprises, and overzealous lending under the auspices of the Community Reinvestment Act (CRA). As House Republican leaders recently put it:

> [T]he economic crisis is a failure of a broken Washington, and a government culture that allowed executives at Fannie Mae and Freddie Mac and other firms to run amok, ultimately imperiling our nation's economy. **For years, Republicans warned of this danger and advocated reform of these so-called government-sponsored enterprises (GSEs). And for years such reforms were thwarted by Democratic lawmakers with deep political ties to the worst offenders, putting the companies' interests ahead of the interests of our country.**

The culpability of Fannie Mae and its leaders is clear. Franklin Raines, J. Timothy Howard and Leanne G. Spencer – Fannie's former chairman, chief financial officer and comptroller – all have entered into settlements with federal regulators based on charges that they mismanaged Fannie. The total value of the settlements is reported to be over $30 million. *See* David S. Hilzenrath, *Raines, Federal Regulators Reach Settlement*, Washington Post (Oct. 15, 2008) (http://blog.washingtonpost.com/washbizblog/2008/04/regulator_to_dismiss_charges_a.html).

Take, too, the example of the Department of Justice's former Deputy Attorney General (DAG), Jamie S. Gorelick. While serving as the Clinton Administration's DAG, Ms. Gorelick actively promoted Community Reinvestment Act enforcement that pressured

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lenders to make risky loans to borrowers who did not meet sound lending standards. These loans often found their way into Fannie Mae's mortgage-backed securities offerings. After completing her tenure at Justice, Ms. Gorelick went on to become vice chairwoman of Fannie Mae – a position for which she had no obvious previous training or experience; indeed she had had no prior experience at all in finance. She served at Fannie Mae from 1997 to 2003, alongside former Clinton Administration official and Fannie Mae chairman Franklin Raines.

Troublingly, during that period, Fannie Mae developed a $10 billion accounting scandal. Yet, according to the Wall Street Journal, a May 2006 Report of the Special Examination of Fannie Mae shows that Ms. Gorelick earned $26,466,834.00 from 1998 to 2003. Along the way, Ms. Gorelick and other Fannie Mae officials also happened to obtain preferential loans from Countrywide Financial Corp., the Nation's largest mortgage lender.

Unfortunately, this litany of failure does not reflect the limits of Ms. Gorelick's wrong turns at Fannie Mae. On the contrary, with Mr. Raines, she also began laying the ground work for the current financial crisis. In 2001, in a speech before the Mortgage Bankers Association (MBA), Ms. Gorelick announced that Fannie Mae's acquisition volume of specially-targeted CRA loans had passed the $10 billion threshold in the second quarter of that year – reaching that milestone more than one and a half years ahead of the schedule Fannie Mae had set. Describing Fannie Mae's plans to the MBA, Ms. Gorelick confidently stated that "Fannie Mae will buy CRA loans from lenders' portfolios; we'll package them into securities; we'll purchase CRA mortgages at the point of origination; and we'll create customized CRA-targeted securities. This expanded approach has improved liquidity in the secondary market for CRA product, and has helped our lenders leverage even more CRA lending."

While Fannie Mae was pursuing this strategy, its leaders spent tens of millions of dollars paying lobbyists to line up their Democratic allies to prevent a Republican Congress from regulating its activities.

We all know how this plan worked out.

Earlier this year, as the mortgage crisis deepened, the Department of Justice announced a broad series of investigations and prosecutions of mortgage fraud. We applaud that effort, known as "Operation Malicious Mortgage." We write today, however, to ask that you be sure to include within the Department's investigative efforts the issues bearing on Fannie Mae, Freddie Mac and the Community Reinvestment Act that lurk behind so much of the mischief in the mortgage and mortgage-backed securities markets. Specifically, we ask:

1. whether the Department's current mortgage-related investigations encompass investigation of mortgage fraud, mortgage-backed securities fraud, and/or accounting fraud committed or aided and abetted by Fannie Mae and Freddie Mac or their officials;

2. whether the Department's current mortgage-related investigations specifically encompass the Friends of Angelo/Countrywide VIP mortgage program, including Countrywide Financial Corp.'s sweetheart loans to Fannie Mae officials such as Jamie Gorelick, Daniel Mudd and James Johnson, as well as Countrywide's sweetheart loans or other favors tied to Fannie Mae's congressional patrons;

3. whether the Department is separately investigating accounting and executive compensation fraud at Fannie Mae during the tenures of Jamie Gorelick and Franklin Raines, including specifically accounting fraud that enabled extravagant bonuses and other compensation to be paid to Gorelick and Raines;

4. whether Jamie Gorelick's promotion of the Department's discretionary enforcement of the Community Reinvestment Act while serving as the Clinton Administration's Deputy Attorney General were either corrupted by Fannie Mae's influence or engaged in to pave the way for Gorelick's lucrative tenure as Vice Chairman at Fannie Mae – a position for which she had no relevant financial industry background; and

5. the degree to which the Department's enforcement efforts under the Community Reinvestment Act, whether unwittingly or not, contributed to the causes of the current financial meltdown, particularly by contributing to a climate in which lenders felt compelled to write mortgage loans to uncreditworthy applicants and in which Fannie Mae and Freddie Mac felt encouraged to purchase those mortgages and bundle them into ultimately toxic mortgage-backed securities.

In addition to seeking your responses to these matters, we also wish to ensure that the manner in which these and other allegations are investigated nationwide is strategic and coordinated. Because of the depth, sophistication and far-reaching impact of potential wrongdoing, we ask that you seriously consider the formation of an Enron-like task force or the appointment of a special counsel to spearhead the investigation. We are aware that, earlier this year, you "rejected . . . the idea of creating a national task force to combat the country's mortgage fraud crisis, calling the problem a localized one akin to 'white-collar street crimes.'" Eric Lichtblau, *Mukasey Declines to Create a U.S. Task Force to Investigate Mortgage Fraud,* New York Times (June 6, 2008). Given the subsequent course of events – which has shocked the financial system across the Nation and the globe – we believe that a more urgent and focused effort led by a task force or special counsel is necessary in order to ensure that the wrongdoers do not profit from their actions and to restore public confidence in this sector of the financial markets. Thus, we hope that you will reconsider your initial decision.

We appreciate your attention to these important problems, and look forward to your reply. Answers to questions such as these are important to the Congress's identification of measures that can be taken to assure that the Nation does not travel again down the dangerous road that produced the current crisis. More important still, answers

are critical to the reassurance of the public that our government can be trusted to police those who would place our economic system in peril.

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