



FCIC Chair Disputes Assertion That Inquiry Found No Wrongdoing

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By calling in his State of the Union Address for a new task force to root out perpetrators of mortgage fraud who caused financial upheaval, President Obama invited attention to the absence of prosecutions during his first three years in office.

Some observers applaud a revitalized focus on financial crimes. By their lights, an existing Financial Fraud Enforcement Task Force —comprising elements of 20 federal agencies and 94 U.S. attorney’s offices, not to mention many state and local efforts — has left very big stones unturned. But skeptics say the new unit will arrive too late in the Obama administration to put criminals behind bars because the trail already has gone cold.

Then there is a view expressed by economist Douglas Holtz-Eakin, president of the American Action Forum, a coalition of center-right economists, business leaders and national policy makers. A former director of the Congressional Budget Office, Holtz-Eakin advised Senator John McCain in his 2008 election campaign. Following the election, Holtz-Eakin became one of four Republican commissioners on the Financial Crisis Inquiry Commission (FCIC) that Congress formed to unpack causes of the economic fiasco. Why aren’t prosecutors winning cases? Because, Holtz-Eakin claims, millions of documents and 700 interviews by the FCIC failed to uncover evidence of crimes.

“We had access to everything that any such task force (unit) would look for and we couldn’t find enough evidence ... for criminal referrals,” Holtz-Eakin told Kevin Hall, a reporter for the Kansas City Star, a McClatchy newspaper. “I think what we found out is

that stupidity is not illegal. A lot of this was bad business decisions, unwise, but it wasn't illegal.”

Full disclosure: I served on the writing staff that produced the FCIC Report published in January 2011. I never met Holtz-Eakin, co-author of a Republican dissent that accompanies the report. I can say though that he was highly regarded by staff colleagues who knew him and by fellow commissioners including Democrats.

But I would say the assertion that the FCIC found no cause for criminal or civil prosecution blurs the factual record. The commission reported extensively on deceptive and potentially fraudulent mortgage securities practices. Where evidence pointed to civil or criminal fraud, the FCIC referred cases to authorities with means to prosecute, commission chairman Phil Angelides told me earlier this week.

Stupid decisions contributed, as Holtz-Eakin claims. There is no criminal or even civil culpability for poor judgment in countless cases. But deliberate suppression of information about shabby quality of mortgages that landed in ill-fated triple-A securities does break the law, and the report repeatedly calls that spade a spade.

Page 169: “Prospectuses for the ultimate investors in the mortgage-backed securities did not contain this information, or information on how few loans were reviewed, raising the question of whether the disclosures were materially misleading, in violation of the securities laws.”

Page 187: “Potential investors were not fully informed or were misled about the poor quality of the mortgages contained in some mortgage-backed securities.”

“The record is clear,” says Angelides, who has high hopes that the new task force will mete out justice where the FCIC found cause. “We were not prosecutors or juries, but we had a clear statutory responsibility to refer potential violations of law to appropriate authorities.” A DOJ spokesman confirms that cases received from the FCIC are under review.

