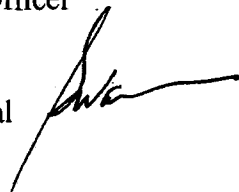


OFFICE OF INSPECTOR GENERAL

Memorandum

TO: David Eisner, Chief Executive Officer
Frank Trinity, General Counsel

FROM: Gerald Walpin, Inspector General 

DATE: April 25, 2008

RE: One portion of Frank Trinity's memoranda dated April 15, 2008

I received late Wednesday two memoranda from Frank Trinity in response to my memorandum dated April 15, 2008. While I will respond to the merits of his memorandum to David (but, unfortunately, because I will be out of town next week, not until I return), I feel sufficiently troubled by the last page of his memorandum to David, which is essentially repeated in his memorandum to me, that I believe that it requires an immediate response on my part.

At the outset, I never understood that the legal opinion of someone who is the "agency general counsel" is sacrosanct and could not be erroneous, merely because of his position. As much as I respect Frank as a person and as a lawyer, and I believe he reciprocates, just as he has not been shy about disagreeing with my views on certain subjects, it is ludicrous to suggest that I cannot do likewise. Indeed, my duties as IG require that I do so.

As you both know, my practice is to be open with both of you as to my views, and thereby attempt, if at all possible, to reach agreement through communications between us, rather than immediately jumping to air my objections with Congress or other entities. I would not be continuing our candid communication relationship, which I believe is the correct relationship, if I did not candidly express to both of you my disagreement with Frank's legal interpretation on the issue under discussion.

As to the major implication (perhaps even more) in Frank's memos: Under no circumstances would I suggest an avenue which I believed was illegal, and there is no basis for suggesting that to be my view. As I expressly stated at the beginning of the last paragraph of my memorandum, "[w]e believe that 'refund' is the appropriate label, for the reasons discussed above" -- indeed for the reasons discussed at length therein. There is no dispute between Frank and me that, if it is a "refund," it then goes back into the Trust.

What followed in that paragraph reflects my view of what a lawyer should do when advising his client. A lawyer should first determine what is in his client's best interests and then determine if an honest analysis of controlling rules, decisions and statutes would support an opinion which allows the client to do what is in the client's best interests. If an honest analysis would not allow it, then the lawyer must tell the client that it cannot be done.



Seldom -- including on the issue here -- is the issue 100% clear cut. A lawyer, in my mind, should not be a cautious naysayer who takes the safer way out by saying it cannot be done when any question exists. In that spirit, my colleagues and I did a careful analysis. We concluded that it certainly would be in the Corporation's best interest -- and, indeed, consistent with the purpose of the statute and Congressional appropriation -- to return, to the Trust, money erroneously disbursed from the Trust. In that way, the money could be put to its intended use, the provision of education awards to eligible recipients, rather than depriving the Trust of such funds.

Then we analyzed the controlling rules and concluded that they authorized the return to the Trust of refunds made, equal to amounts which had been erroneously disbursed from the Trust.

Then, as a proper supplementary procedure, we analyzed what the danger was to the client, *i.e.*, the Corporation, if our legal opinion was incorrect (recognizing that we too are not infallible). For the reasons set forth, we concluded that there was no material risk.

But our doing this thorough analysis provides no basis for the suggestion that it involved our overlooking Congress, the GAO or the Justice Department and their respective views on the Miscellaneous Receipts Act.