



U.S. OFFICE OF SPECIAL COUNSEL

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Washington, D.C. 20036-4505

The Special Counsel

February 24, 2016

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-14-3866

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding an unredacted Department of Veterans Affairs' (VA) report based on disclosures of wrongdoing at the Veterans Benefits Administration (VBA), Home Loan Guaranty Program, St. Petersburg Regional Benefit Office, St. Petersburg, Florida. I reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency report and my findings.¹ The whistleblower, who chose to remain anonymous, alleged that management in the St. Petersburg Regional Benefit Office consistently disregarded federal regulations and agency guidance prohibiting certain fees charged by lenders in loan agreements, and St. Petersburg loan specialists routinely approved loans with fee structures that exceed regulatory percentage limits on permissible administrative fees.

The whistleblower's allegations were referred to Secretary Robert A. McDonald for investigation pursuant to 5 U.S.C. § 1213 (c) and (d). Investigation of the matter was delegated to the Veterans Benefits Administration's Loan Guaranty Service. Then-Chief of Staff Robert L. Nabors, II, was delegated the authority to review and sign the report. On December 31, 2015, Mr. Nabors submitted the agency's report to OSC. The whistleblower declined to provide comments to the report.

The agency did not substantiate the whistleblowers' allegations. The investigation determined that fees that the whistleblower asserted were impermissible were in fact,

¹ The Office of Special Counsel (OSC) is authorized by law to receive disclosures of information from federal employees alleging violations of law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. 5 U.S.C. § 1213(a) and (b). OSC does not have the authority to investigate a whistleblower's disclosure; rather, if the Special Counsel determines that there is a substantial likelihood that one of the aforementioned conditions exists, she is required to advise the appropriate agency head of her determination, and the agency head is required to conduct an investigation of the allegations and submit a written report. 5 U.S.C. § 1213(c). Upon receipt, the Special Counsel reviews the agency report to determine whether it contains all of the information required by statute and that the findings of the head of the agency appear to be reasonable. 5 U.S.C. § 1213(e)(2). The Special Counsel will determine that the agency's investigative findings and conclusions appear reasonable if they are credible, consistent, and complete based upon the facts in the disclosure, the agency report, and the comments offered by the whistleblower under 5 U.S.C. § 1213(e)(1).

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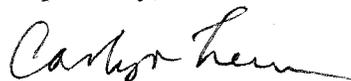
allowed under VA regulations. In addition, review of the case notes for examples provided by the whistleblower revealed no evidence of management's instructions to take action that would violate or disregard any VA policy or procedure. Because the allegations were not substantiated, no corrective actions were necessary.

The report noted that the original referral cited to 38 C.F.R. § 36.4313 Part b, which states: "Except as provided in this subpart, no brokerage or service charge or their equivalent may be charged against the debtor or the proceeds of the loan either internally, periodically, or otherwise." The report explained that this section does not specify whether prohibited "brokerage fees" refers to real estate brokerage fees or mortgage brokerage fees. The report acknowledged that the VA prohibits real estate brokerage fees. However it found there is no prohibition in VA regulations or policy preventing veterans from paying mortgage brokerage fees on VA-guaranteed home loans, noting the Lenders Handbook, VA Pamphlet 27-7 defines "brokerage fees" as "commissions charged by a real estate agent or broker." The report further noted that all the fees and charges featured in seven sample cases provided by the whistleblower were determined to be permissible under VA regulations and, as such, no wrongdoing occurred. The agency indicated, though, that it "will take the opportunity to evaluate the clarity of policies and procedures regarding fees and charges."

I have reviewed the original disclosure and the agency report. Based on my review, I have determined that the report meets all statutory requirements and the findings appear reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of this letter and the agency report to the Chairmen and Ranking Members of the Senate and House Committees on Veterans' Affairs. I have also filed a copy of this letter and the agency report in our public file which is available at www.osc.gov.² This matter is now closed.

Respectfully,



Carolyn N. Lerner

Enclosure

² The VA provided OSC with reports containing employee names (enclosed), and redacted reports in which employees' names were removed. The VA has cited Exemption 6 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(6)) as the basis for its redactions to the reports produced in response to 5 U.S.C. § 1213, and requested that OSC post the redacted version of the reports in our public file. OSC objects to the VA's use of FOIA to remove these names because under FOIA, such withholding of information is discretionary, not mandatory, and therefore does not fit within the exceptions to disclosure under 5 U.S.C. § 1219(b), but has agreed to post the redacted version of the reports as an accommodation.