



**U.S. OFFICE OF SPECIAL COUNSEL**

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The Special Counsel

September 22, 2016

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

Re: OSC File No. DI-14-3428

Dear Mr. President:

Pursuant to my duties as Special Counsel, I am forwarding a Small Business Administration (SBA) report based on disclosures of wrongdoing in the SBA's Boots to Business Program, Washington, D.C. The whistleblower, Nicholas Harrison, who consented to the release of his name, alleged that SBA collected demographic information from private citizens without proper Office of Management and Budget (OMB) approval, in violation of the Paperwork Reduction Act, and that SBA did not provide proper notice to individuals prior to the collection of Personally Identifiable Information (PII), in violation of the Privacy Act of 1974. I have reviewed the report and, in accordance with 5 U.S.C. § 1213(e), provide the following summary of the agency report, whistleblower comments, and my findings.<sup>1</sup>

Mr. Harrison's allegations were referred to the Honorable Maria Contreras-Sweet, SBA Administrator, for investigation pursuant to 5 U.S.C. § 1213. SBA's Office of General Counsel investigated the matter, and General Counsel Melvin F. Williams, Jr. was delegated the authority to review and sign the report. On March 18, 2016, Mr. Williams submitted the agency's report to the Office of Special Counsel (OSC). Mr. Harrison commented on the report on April 21, 2016.

The report substantiated that SBA collected demographic information from private citizens without proper OMB approval, in violation of the Paperwork Reduction Act. In addition, the report noted that Syracuse University, a SBA Boots to Business Program partner, also participated in the collection of demographic information. However, based upon the available evidence, the investigation could not determine whether Syracuse University

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<sup>1</sup>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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improperly collected personal information at the direction of SBA in a manner that violated the Paperwork Reduction Act. The report noted that SBA has since taken appropriate measures to ensure compliance with federal law, including publishing a notice concerning the program's information collection features in the Federal Register and submitting program documents to OMB for approval. With respect to allegations concerning the collection of PII, the report explained that investigators did not find evidence indicating that SBA stored or used the data at issue in a manner that violated the Privacy Act. Notwithstanding this finding, SBA has since developed a new records storage system for the program that is fully compliant with the Privacy Act.

Mr. Harrison commented that the report is not credible, consistent, or complete, asserting that the agency did not conduct a good faith investigation into his allegations. He noted that the SBA Office of Inspector General began reviewing this matter starting in June 2014, after he contacted their office but prior to filing with OSC. Mr. Harrison asserted that the SBA Administrator's Office appeared to have intervened and halted the ongoing OIG examination. He also noted that the authority to investigate the allegations featured in OSC's referral was delegated to SBA's Office of General Counsel (OGC). He alleged that this was inappropriate, due to SBA OIG's familiarity with his allegations, and because OGC is not responsible for conducting independent investigations. Mr. Harrison further objected to SBA OGC investigating his allegations, because the same SBA OGC attorneys were simultaneously representing the agency in a prohibited personnel practices matter that Mr. Harrison filed with OSC. He felt that this undermined the neutrality and quality of the investigation. Mr. Harrison also felt that SBA misrepresented his testimony in conclusions they reached in the report.

I have reviewed the original disclosure, the agency report, and Mr. Harrison's comments. While I am troubled by the concerns Mr. Harrison raised in his comments, particularly regarding the tasking of the investigation, the report noted that the agency took measures to achieve proper regulatory compliance to ensure that it appropriately collected and maintained the information after partially substantiating Mr. Harrison's allegations. For these reasons, I have determined that the report appears to meet all statutory requirements, and the findings appear to be reasonable.

As required by 5 U.S.C. § 1213(e)(3), I have sent copies of the agency report and Mr. Harrison's comments to the Chairmen and Ranking Members of the Senate Committee on Small Business and Entrepreneurship and the House Committee on Small Business. I have also filed copies of these documents in our public file, which is available at [www.osc.gov](http://www.osc.gov). OSC has now closed this file.

Respectfully,



Carolyn N. Lerner

Enclosures