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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

January 11, 2008

The Honorable Steven C. Preston
Administrator
U.S. Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Re: Unauthorized Monitoring of Employee Emails by SBA Managers (OIG Report No. 08-02)

Dear Administrator Preston:

The purpose of this correspondence is to address the troubling findings set forth in a recent report issued by the SBA's Office of Inspector General (OIG). The OIG report indicates that SBA managers in the Office of Disaster Assistance (ODA) accessed the emails of an SBA employee who served as a confidential source to the Senate Committee on Small Business and Entrepreneurship. According to the OIG's report, the monitoring took place after the ODA employee submitted hearing testimony to the Committee on an anonymous basis. I am extremely concerned that this practice discourages potential whistleblowers from reporting misconduct to Congress.

In its oversight capacity, the Committee often relies upon information received from SBA employees who ask that their communications remain confidential. When the SBA permits managers to arbitrarily access employee emails, confidentiality cannot be assured, and SBA employees are less likely to communicate with the Committee. As a result, the Committee's ability to properly carry out its oversight function is undermined.

In addition, the practice could have a chilling effect on an SBA employee's right to provide information to the Committee. The Civil Service Reform Act of 1978 (CSRA) provides that an agency employee's right to furnish information to a Congressional committee "may not be interfered with or denied" (15 U.S.C. §7211). Granting SBA managers the power to monitor employee emails may interfere with that right by diminishing an employee's ability to effectively report misconduct to the Committee.

Furthermore, under federal whistleblower statutes like the CSRA, an agency employee has the right to report allegations of misconduct on a confidential basis. The whistleblower statutes provide important protections to those employees who are courageous enough to report waste and abuse despite the obvious risks. Last month I joined Senators from both sides of the aisle in approving the Federal Employee

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Protection of Disclosures Act (S. 274), a bill that will further enhance agency employees' whistleblower protections. Ironically, the bill would specifically prohibit the SBA from instituting "retaliatory investigations" against whistleblowers like the SBA employee in question.

Notwithstanding this pending legislation, I urge the SBA to take preemptive, independent action to avoid future encroachments on the whistleblower rights of its valued employees. My staff informs me that the SBA, in conjunction with the OIG, is in the process of revising its email access authorization guidelines, which are currently set forth in SBA Standard Operating Procedure (SOP) 90 49. I ask that you include appropriate members of the Committee's staff in those discussions to ensure that the new SOP includes proper safeguards for whistleblowers who contact Congress via email. In the meantime, please provide the Committee with the most recent version of the draft SOP that has been circulated between the SBA's Office of General Counsel and the OIG.

If you have any questions, or if we can be of assistance in achieving the objectives set forth in this letter, please contact me or have a member of your staff contact Nick Coutsos of my staff at 202-224-5175. Thank you for your prompt attention to this matter.

Sincerely,



John F. Kerry
Chairman