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United States Senate

COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510-6350

June 30, 2000

The Honorable Jacob Lew
Director, Office of Management and Budget
Eisenhower Executive Office Building
17th Street & Pennsylvania Avenue NW
Washington, DC 20503

Dear Mr. Lew:

We have lately been informed of a proposed reorganization within the Department of Commerce (Department) that would change the reporting relationship of the Office of Small and Disadvantaged Business Utilization (OSDBU) within the Department. After reviewing statutory and other materials, as well as materials supplied by the Department in staff briefings (attached), we are convinced that the proposed reorganization violates not only the Small Business Act, but also Administration policy expressed in Executive Order 12928. Accordingly, we ask you to reject this proposed reorganization.

Any effort to reduce the stature and standing of the Commerce Department's small business efforts is contrary to the nation's public policy. The Small Business Act, as amended, creates an OSDBU in every agency with procurement authority, and expressly mandates that this office report directly to the agency head or to the deputy of the agency head. The Act very clearly states that this is the only authorized reporting relationship. Small Business Act, § 15(k), 15 USC § 644(k).

Second, we note that the proposed reorganization is contrary to Administration policy, as expressed in Executive Order 12928 of September 16, 1994 (Order). Section 4 of that Order states, with respect to the direct reporting requirement set forth in the Small Business Act:

- (a) * * * To the extent not prohibited by law, each department and agency shall ensure that the aforementioned direct reporting requirements are henceforth vigorously enforced.
- (b) Because of the importance of the OSDBU function, each department and agency shall also, to the extent not prohibited by law, comply with the Office of Federal Procurement Policy Letter No. 79-1 of March 7, 1979, which provides implementation guidance on section 15k [sic] and the organization placement and functions of the OSDBU.

Office of Federal Procurement Policy Letter 79-1 of March 7, 1979, simply reiterates the Small Business Act language that the only authorized reporting relationship is to the Secretary or the Deputy Secretary.

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The Department has indicated that this relationship would be unchanged for policy purposes, and that the OSDBU would report to the Deputy Chief Financial Officer solely for purposes of budget and administration. Moreover, the Department indicates that the OSDBU has had a separate reporting relationship for budget and administration for the past 21 years, and states that they are merely changing the person to whom that reporting is done. We do not believe this statement has merit relative to the law.

The Small Business Act does not contemplate a bifurcated reporting relationship for the OSDBU. In fact, the Act states that the only reporting relationship shall be to the Secretary or the Deputy Secretary. If in fact the OSDBU has had such a reporting relationship for the past 21 years, that means only that the Department has been operating contrary to law for 21 years. Prior to this proposed reorganization, we were not aware of this arrangement and at no time have we acquiesced in it.

It is not correct to characterize the matter as relatively minor by saying that the proposed reporting relationship involves merely matters of budget and administration. Budget and administration issues are necessarily policy matters, as you yourself no doubt can attest.

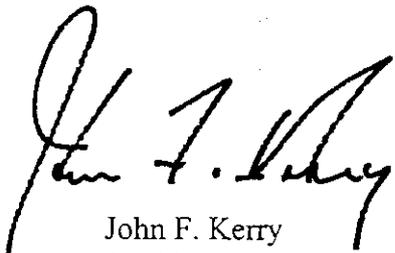
Moreover, we are unconvinced by the argument posed by Barbara S. Fredericks, Assistant General Counsel for Administration, that the Small Business Act intended only for the OSDBU to have access to high-level agency heads for policy purposes, and that the proposed reorganization complies with that intent as expressed in Senate Report 95-1070. References to the legislative history of Public Law 95-507 (amending the Small Business Act to create the OSDBUs) are not relevant. It is a settled rule of statutory construction that one looks to the legislative history only when the statutory language is unclear. In this case, the Small Business Act could not be clearer: the only reporting relationship shall be to the Secretary or the Deputy Secretary.

Finally, we are concerned that other departments and agencies may see the Department's reorganization as an opportunity to take similar action against their own OSDBUs. Left unchanged, the Department's actions become a precedent for other agencies to lower the stature of their small business programs. Thus, even if the Department operates a strong small business program under this reorganization, other agencies may construe this reorganization as a signal that small business is no longer a high priority and that they should feel free to de-emphasize it.

We call upon you to reject the Department's proposed reorganization plan, insofar as it continues a bifurcated reporting relationship not authorized by the statute or by Administration policy. We further call upon you to insist that the Department reorganize to terminate the bifurcated relationship and to comply with the unequivocal language of the law.

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If you have questions about this letter, please contact Cordell Smith of the Senate Small Business Committee majority staff on (202)224- or Damon Dozier of the minority staff on (202)224-



John F. Kerry
Ranking Member

Sincerely,



Christopher S. Bond
Chairman

cc: Acting Secretary of Commerce
Linda Bilmes, Chief Financial Officer
and Assistant Secretary for Administration



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

JUN 27 2000

Mr. Cordell Smith
Professional Staff Member
Small Business Committee
United States Senate
Russell Senate Office Building, Room 428A
Washington, D.C. 20510

Dear Mr. Smith:

Thank you for the opportunity to meet with you on June 8 to discuss our plans for the Department's Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) organization. Under the proposed reorganization, several functions will be merged and the number of directorates will be reduced from eleven to nine.

Specifically, the Office of Executive Budgeting will be combined with the Office of Financial Management (OFM) under the Deputy Chief Financial Officer (DCFO). By doing so, we will enhance the financial clarity and management of the Working Capital Fund and other centralized funding mechanisms. The Office of Executive Assistance Management will merge with the Office of Management and Organization. Integrating them will consolidate management of related activities, achieve economies of scale and streamline the Office of the CFO/ASA.

Also under the proposed reorganization, the Office of Small and Disadvantaged Business Utilization (OSDBU) will continue reporting to the Deputy Secretary on all legislative and policy matters. On administrative matters, e.g., personnel and budget, it will begin reporting to the DCFO rather than the Deputy Assistant Secretary (DAS) for Administration, as is now the case. The DCFO and DAS for Administration both report to the CFO/ASA. This bifurcated approach has been in place throughout OSDBU's 21-year history. I am enclosing an opinion from the Assistant General Counsel for Administration confirming that there is no legal impediment to placing OSDBU within OFM for administrative purposes.

Commerce is deeply committed to the goals of the Small Business Act, and our record reflects our determination to increase business opportunities for small and disadvantaged firms. As a result of these efforts, the Commerce Department now leads all Federal agencies in awarding contracts to small, minority and women-owned businesses. We believe that this organizational alignment will strengthen OSDBU's ability to serve the small business community.

At the bureau level, procurement functions fall under the purview of the bureau CFOs. Because the DCFO oversees 50 percent of the performance plan for the bureau CFOs, the DCFO has both the clout and the leverage to influence procurement in each bureau. Positioning OSDBU within

this structure will provide even greater incentives for the bureaus to continue collaborating with OSDBU on increasing procurement opportunities for small and disadvantaged businesses.

I hope that this information clarifies the basis on which we have proposed this reorganization. Please do not hesitate to contact me if you believe additional background would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to be 'LJ Bilmes', with a long horizontal flourish extending to the right.

Linda J. Bilmes
Chief Financial Officer and
Assistant Secretary for Administration

Enclosure

JUN 23 2000



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

MEMORANDUM FOR: Linda J. Bilmes
Chief Financial Officer and
Assistant Secretary for Administration

FROM: Barbara S. Fredericks *BSF*
Assistant General Counsel
for Administration

SUBJECT: OSDBU Reporting Arrangements

You have requested that we review the proposed reorganization within the Office of Administration that would have the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) report to the Deputy Secretary on policy matters and to the Deputy Chief Financial Officer (Deputy CFO) on administrative matters.

Public Law 95-507, which established an OSDBU in each Federal procuring agency, makes it clear that the director of that office must "be responsible only to, and report directly to, the head of such agency or to the deputy of such head" (15 U.S.C. §644(k)(3)). The legislative history of that public law emphasizes Congress' concern that the head of that office "have direct access to top level agency policymakers to improve their effectiveness as small business advocates" (Sen. Rep. No. 95-1070; emphasis added). If the Director of OSDBU at the Department reports to the Deputy CFO only on administrative matters, this does not appear to contradict the intent of the law.