

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6515

September 18, 2024

The Honorable Isabella Casillas Guzman
Administrator
U.S. Small Business Administration
409 3rd Street SW
Washington, DC 20416

Dear Administrator Guzman:

The House Committee on Small Business (Committee) writes regarding its concerns with the Small Business Administration's (SBA) production of documents pursuant to the Committee's July 30, 2024 subpoena. Specifically, the Committee is deeply concerned that the SBA has misled the Committee regarding the existence of a document the Committee specifically demanded in the subpoena: the strategic plan the SBA submitted to the White House's Domestic Policy Counsel in September 2021 under Executive Order (E.O.) 14019.¹ On numerous occasions, the SBA and its staff claimed that this document did not exist before eventually claiming it could not be produced to the Committee.

In the Committee's first letter to the SBA regarding its Memorandum of Understanding with the Michigan Department of State, sent on April 4, 2024, the Committee requested "Interim and final reports drafted and submitted to the White House regarding implementation of the E.O. from March 1, 2021, through October 31, 2021."² After three months, the SBA neither produced these documents, nor a number of other documents the Committee had requested, forcing the Committee to issue a subpoena that included this outstanding request.³ In response to the subpoena, SBA officials stated to Committee staff that no responsive document existed.

The Committee was skeptical of SBA's claim, as failing to submit this report would violate the terms of the Executive Order, which requires that agencies "submit to the Assistant to the President for Domestic Policy a strategic plan outlining the ways identified under this review that the agency can promote voter registration and voter participation."⁴ On two separate occasions, Committee staff further inquired about this document with SBA staff and added context to help the SBA identify the document, including directing the SBA to the specific portion of the executive order requiring this report in a meeting with SBA staff; the SBA again indicated that no such document exists. The

¹ Exec. Order No. 14019, 86 Fed. Reg. 13623 (Mar. 10, 2021).

² Letter from Roger Williams, et al., Chairman, H. Comm. on Small Bus., to Isabella C. Guzman, Adm'r, U.S. Small Bus. Admin. (Apr. 4, 2024).

³ Subpoena from H. Comm. On Small Bus., to Isabella C. Guzman, Adm'r, U.S. Small Bus. Admin. (Jul. 30, 2024).

⁴ Exec. Order No. 14019, 86 Fed. Reg. 13623, 13624 (Mar. 7, 2021).

Committee then tried to steer the SBA to reconsider its claim that it did not have any such document in its August 16, 2024 letter, which informed the SBA of a Freedom of Information Act (FOIA) litigation involving this document, and the Committee's belief that the document referenced in this case was responsive to its request.⁵

On August 30, 2024, the SBA responded to the Committee's letter stating that "SBA's position in the referenced litigation is consistent with previous statements to the Committee. SBA's declaration in that litigation notes 'no final strategic plan existed.' Thus, as we have stated to the Committee, no final plan was transmitted to the White House."⁶

The Committee did not merely request the final strategic plan submitted to the White House, rather, it requested interim and final reports submitted to the White House pursuant to E.O. 14019. In fact, the Committee used such inclusive language in its request to avoid the very gamesmanship the SBA is now engaging in. Relatedly, in the FOIA case involving these documents, the SBA also initially claimed that no responsive document existed. The SBA then partially granted plaintiff's appeal, reasoning that a draft document that was submitted to the White House was responsive to their request.⁷

The SBA submitted a draft plan to the White House on this matter in September 2021.⁸ The Committee has been requesting this document since April 4, 2024. This draft would certainly meet the ordinary understanding of the term "interim," as was requested by the Committee. And while the SBA's August 30 letter asserted that this document was withheld in the FOIA case under a valid exemption, FOIA exemptions do not provide a shield from Congressional investigations, and the exemption cited in this case includes privileges not recognized by this Committee. As noted in the Committee's subpoena, should the SBA wish to make a claim of privilege on this document, it must clearly state this and provide a description of the document for the Committee. The SBA cannot pretend or claim that this document simply does not exist.

Further, the Committee is greatly concerned that the SBA has entered into a Memorandum of Understanding and Agreement with the Michigan Department of State, in furtherance of E.O. 14019, while proudly proclaiming it never created a finalized plan to submit to the White House. Involving the SBA in voter registration efforts creates serious concerns regarding potential political influence by the SBA or its staff on small business owners and inherently strains constitutional principles. To involve the SBA in such activity without a finalized plan increases the level of risks substantially and increases the likelihood that this agreement will be misused.

⁵ Letter from Roger Williams, et al., Chairman, H. Comm. on Small Bus., to Isabella C. Guzman, Adm'r, U.S. Small Bus. Admin. (Aug. 16, 2024).

⁶ Letter from George Holman, Assoc. Adm'r, Congressional and Legislative Affairs, U.S. Small Bus. Admin. to Roger Williams, Chairman, H. Comm. on Small Bus (Aug. 30, 2024).

⁷ U.S. Small Bus. Admin. Decl., *Am. First Legal Found. v. U.S. Dep't of Agric.*, No. 22-cv-3029, 2 (D.D.C. Jan. 11, 2023) (Exhibit A)

⁸ *Id.*

While the SBA's actions create substantial concerns regarding the SBA's truthfulness, provided the SBA adequately addresses the Committee's concerns in this matter, the Committee does not believe it is necessary for it to take further action on this issue, but it reserves its right to take such action if necessary. The Committee hopes that, in making clear its desire to avoid such action, the SBA may begin to better appreciate the substantial efforts the Committee has made to accommodate the SBA throughout the 118th Congress, and that more productive dialogs between the Committee and the SBA may resume.

The Committee has broad authority to investigate "problems of all types of small business" under House Rule X.3(l). The SBA's persistent delays continue to undermine the Committee's investigation into these efforts. Further, the Committee must reiterate its serious concerns regarding the SBA's efforts to comply with its legitimate oversight requests. We therefore request the following information and answers as soon as possible but no later than October 9, 2024:

1. Does the SBA have possession of a document that it sent to the White House regarding its planned actions under E.O 14019, as required by the E.O.?
2. Was the SBA aware of this document when it initially informed the Committee that no responsive documents existed?
3. Why did the SBA not produce this document to the Committee in response to the subpoena?
4. What search terms and methods did the SBA use to determine that no responsive document exists?
5. Describe the working relationship between the SBA's FOIA office and its office responsible for Congressional document production.
 - a. When FOIA requests overlap with Congressional document requests, to what extent do the FOIA and document production teams collaborate?
6. Going forward, what steps will the SBA take to ensure its productions are accurate and complete?

In God We Trust,



Roger Williams
Chairman
Committee on Small Business



Beth Van Duyne
Member of Congress
Committee on Small Business

The Honorable Isabella Casillas Guzman

September 18, 2024

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cc: The Honorable Nydia M. Velázquez, Ranking Member