MEMORANDUM

To: Aaron Jordan,
Assistant Inspector General for Investigations

From: John King
Senior Advisor, Delegated the Responsibilities of the Deputy Secretary

Subject: Response to Addendum to the Report of Investigation: ED/OIG Case: #11-000468, Danny Harris

I am writing to respond to the issues raised by the Office of Inspector General (OIG) in its memorandum to me dated March 23, 2015, regarding Danny Harris (Addendum to the Report of Investigation: ED/OIG Case #11-000468). In that memorandum, the OIG asked me to review the report of its initial findings that were sent to then Deputy Secretary Tony Miller on April 2, 2013, and to determine whether any administrative actions should be taken with regard to those initial findings, as well as the information contained in the Addendum.

I have considered the materials provided by OIG carefully, and consulted with the Office of the General Counsel (OGC) in reviewing these issues and all of the information provided by the OIG. It is also my understanding that my work in this regard supplements the work done by Tony Miller, and Jim Shelton, the previous Deputy Secretaries, working in consultation with OGC on these matters. Overall, we found no violations of law or regulation. However, based on the material provided, I believe Mr. Harris displayed certain lapses in judgment which were addressed through counseling provided to him by two prior Deputy Secretaries as well as oral counseling provided by the Department's Designated Agency Ethics Official (DAEO). To close this matter, we are further supplementing their actions with written guidance from the DAEO and additional counseling that I will provide to Mr. Harris.

Attached please find a summary of the key findings that were mentioned in the March 23, 2015 memorandum and a brief summary of the considerations that were made with regard to the findings, and whether additional administrative actions have been initiated to resolve this matter.

I appreciate OIG's work on these matters, and the opportunity to address them directly and effectively.

Please let me know if you have any questions or need further information.

SUMMARY OF KEY FINDINGS AND ACTIONS

Summary Conclusions and Actions:

Following the original Report of Investigation in this matter, Danny Harris was counseled by two Deputy Secretaries on the outside business and taxes issues and the Department's DAEO similarly provided counseling to him. In response to both the Report of Investigation and Addendum, both DOJ and the IRS have declined to take further action.

I have reviewed the original and additional evidence and have determined that in addition to the corrective actions that have been already taken, we will take the following corrective actions: the Department's DAEO will summarize her counseling in a written counseling memo and I will provide further counseling on certain topics as noted below.

Below is a summary of the key findings that were mentioned in the March 23, 2015 memorandum and a brief summary of the considerations that were made with regard to those findings and a description of the additional administrative actions that have been initiated to resolve this matter.

FINDING 1: "Participated in awarding OCIO contracts to E-Source Technologies while having a personal relationship with William Hall, E-Source owner"

Conclusions and Actions.

Overall, the evidence does not appear to support a conclusion that Mr. Harris violated any law or regulation, or any standard of ethical conduct. It appears that Mr. Harris exercised questionable judgment in not seeking advice on this matter. Susan Winchell, the Department's DAEO, provided counseling to Mr. Harris in early 2014 regarding personal friendships with contractor staff and the potential for an appearance of lack of impartiality. She is now confirming that advice and counseling in writing. Additionally, I intend to remind Mr. Harris about the potential for an appearance of a lack of impartiality, and to discuss the importance of seeking advice on matters such as these at an early stage.

FINDING 2: "Operated outside business ventures in which he employed OCIO subordinate staff..."

Conclusions and Actions.

Based on our review of your reports, it is unclear whether Mr. Harris' outside ventures were a "business" or a "hobby," and whether it was an "outside activity" for which approval should have been requested.

On these matters, it appears that Mr. Harris exercised poor or questionable judgment in conducting these activities, and he should have included income earned from these activities on his financial disclosure forms. As a result, it is my understanding that Mr. Harris was counseled

by then Deputy Secretary Tony Miller and his successor, Jim Shelton, and was advised to use better judgment in the future on such matters. Additionally, the Department's DAEO provided counseling on this issue to Mr. Harris. Mr. Harris submitted financial disclosure forms for subsequent years that included the earned income from these activities. Mr. Harris was not required to amend prior financial disclosure forms. Additionally, he was counseled to seek review by the IRS as soon as possible, which we understand he did. He filed amended returns and included the income from his activities. Based on the file sent by OIG on March 23, 2015, the IRS reviewed the matter, decided not to take any further action, and actually returned funds to Mr. Harris.

The Department's DAEO is confirming in writing the advice and counseling she had previously provided orally to Mr. Harris on these matters, and I will discuss this matter further with him to help ensure that situations like this will not reoccur in the future.

FINDING 3: "Used his Department e-mail to conduct his outside business ventures"

Conclusions and Actions

As noted above, it was not clear whether Mr. Harris' activities relating to his outside endeavors were part of a business activity or a hobby. It does appear to be clear, however, that he used Department e-mail in connection with these non-government activities. While the Department policy on use of Department e-mail allows some incidental use for personal reasons, it does not allow it to be used for a business. The Handbook OCIO-01, *Handbook for Information Assurance Security Policy*, dated 12/19/2005 in Section 4.1.3.2 provides:

- Users shall use E-mail for Government business. However, users may occasionally make personal use of E-mail that involves minimal expense to the Government and does not interfere with Government business, and consistent with the Departmental directive on *Personal Use of Government Equipment.*

As a senior officer in one of the offices that is responsible for the e-mail system, Mr. Harris should have been more sensitive to the policy considerations around personal use of government equipment and resources. The DAEO's written counseling includes a discussion of the personal use of government resources. I will also discuss this matter with Mr. Harris and emphasize the need for senior officers to set an example for all employees.

FINDING 4: "Took actions to help his son, Bradley Harris, secure employment in the Department's Office of Innovation and Improvement"

Conclusions.

In 2009, Mr. Harris sent an e-mail to Margo Anderson asking if her office had a job opening. According to the investigation, after sending this initial inquiry, there is no information or evidence presented that suggests Mr. Harris took any steps to influence OII to hire his son. Rather, Mr. Harris did not further communicate with Ms. Anderson or OII about his son's

hiring. Further, after his son was hired, Mr. Harris did not further communicate with OII about his son's performance or on any other matter related to his son's employment. We conclude that Danny Harris did not take any inappropriate action, and no further action is needed on this matter.

FINDING 5: "Made a $4000 personal loan to his subordinate employee, Angela Butler"

Conclusions and Actions.

It is not a violation of the Standards of Ethical Conduct for a superior to give a gift or make a loan to a subordinate, unless repayment of the loan is handled in a coercive or unfavorable manner toward the subordinate. Notwithstanding the circumstances, even though not prohibited, a loan of this kind can create an appearance of lack of impartiality with respect to the supervisor's actions toward the subordinate and should generally be avoided. This guidance is also being covered in a written counseling memo from the Department's DAEO.