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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
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November 21, 2016

The Honorable Beth Cobert
Acting Director
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415-1000

Dear Acting Director Cobert:

On February 18, 2015, I wrote to your predecessor, Office of Personnel Management (OPM) Director Katherine Archuleta, regarding a practice known as “burrowing in” or “conversion,” in which political appointees convert to career positions in the competitive service, the Senior Executive Service, or the excepted service.¹ Unlike political appointees, career employees must be selected on the basis of merit, and continue working without regard to changes in administrations.² As we progress through the presidential transition, I respectfully request more information about recent or forthcoming conversions.

With the results of the Presidential election, there could be an increase in attempts by the nearly 4,000 political appointees across the Federal government to convert to career positions.³ I am concerned that, due to the seniority of political appointees at many agencies, there could be pressure to approve these conversions outside the standard merit-based approach to federal hiring. It is imperative that we ensure our federal civilian workforce is merit-based and independent.

It is encouraging that you issued a notice on January 11, 2016, to all agency heads that all political conversions must be reviewed by OPM.⁴ However, a review conducted by the Government Accountability Office (GAO) found that some agencies implemented political conversions without receiving prior approval from OPM.⁵ GAO also found that OPM does not

¹ Letter from Hon. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (HSGAC), to Hon. Beth Cobert, Acting Dir., Office of Pers. Mgmt. (OPM) (Feb. 18, 2015).

² Cong. Research Serv., *Federal Personnel: Conversion of Employees from Appointed (Noncareer) Positions to Career Positions in the Executive Branch* (Nov. 2, 2012).

³ According to the Washington Post, there are 3,880 political appointments by an incoming Presidential Administration. See also Bonnie Berkowitz and Kevin Uhrmacher, *It's Not Just The Cabinet: Trump's Transition Team Needs To Find Nearly 4,000 Appointees*, WASHINGTON POST (Nov. 12, 2016), available at <https://www.washingtonpost.com/graphics/politics/trump-transition-appointments-scale/>.

⁴ Letter from Beth Cobert, Acting Director, Off. of Personnel Management (Jan. 11, 2016), available at <https://www.chcoc.gov/content/appointments-and-awards-during-2016-presidential-election-period>.

⁵ U.S. Gov't Accountability Off., Office of Personnel Management: Actions Are Needed to Help Ensure the Completeness of Political Conversion Data and Adherence to Policy, 9-10, GAO-16-859 (Sept. 2016), available at <http://www.gao.gov/assets/690/680178.pdf>.

adequately verify the data on political conversions reported by agencies.⁶ In one instance, an agency that did not receive prior approval from OPM appointed a Schedule C political employee to a career competitive position over “a compensably disabled veteran who appeared qualified for the position and should have received top consideration in the selection process based on active military service.”⁷

As we approach the closing days of the Obama Administration, we must guard against inappropriate hiring practices to ensure merit-based federal employment and protect the independence of the federal civil service. To assist the Committee’s oversight, I request that you provide the following information:

1. A list of all federal employees who have converted from political appointments to career positions during the period of June 30, 2016, and the date of your response, including the following information regarding each employee:
 - a. The employee’s full name;
 - b. The employee’s first date of employment at the department or agency;
 - c. All job titles held by the employee throughout his or her tenure at the department or agency, and the dates of any title changes;
 - d. All salaries received by the employee throughout his or her tenure at the department or agency and the dates of any salary changes;
 - e. The date on which the employee transitioned to a career position within the department or agency; and
 - f. For any conversions for which OPM conducts a post-appointment review:
 - i. OPM’s findings from the review;
 - ii. Recommendations provided by OPM to the violating agency;
 - iii. Corrective actions taken by the violating agency; and
 - iv. Whether the political appointee remained in the same career position.

2. A weekly update of all conversions and requests for conversions from political appointments to career positions that occur between the date of your response, and January 20, 2017, including the following information regarding each employee:
 - a. The employee’s full name;
 - b. The employee’s first date of employment at the department or agency;
 - c. All job titles held by the employee throughout his or her tenure at the department or agency, and the dates of any title changes;
 - d. All salaries received by the employee throughout his or her tenure at the department or agency and the dates of any salary changes; and
 - e. The date on which the employee transitioned to a career position within the department or agency.
 - f. For any conversions for which OPM conducts a post-appointment review:
 - i. OPM’s findings from the review;
 - ii. Recommendations provided by OPM to the violating agency;

⁶ *Id* at 18-20.

⁷ *Id* at 11.

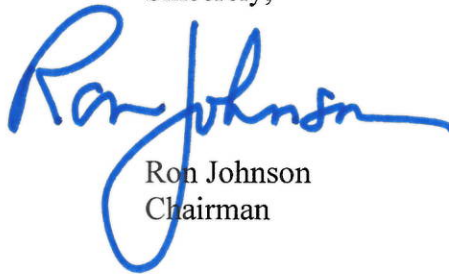
- iii. Corrective actions taken by the violating agency; and
- iv. Whether the political appointee remained in the same career position.

Please provide your response as soon as possible but no later than 5:00 p.m. on December 1, 2016, followed by weekly updates.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”⁸ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption or unethical practices. . . .”⁹ For purposes of this request, please refer to the definitions and instructions in the enclosure.

Thank you for your attention to this important issue. If you have any questions about this request, please have your staff contact Courtney Allen on the Committee staff at (202) 224-4751.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Tom Carper
Ranking Member

Enclosure

⁸ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

⁹ S. Res. 73 § 12, 114th Cong. (2015).

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
114th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
 7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
 9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
 11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
 12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

Instructions for Responding to a Committee Request

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

Instructions for Responding to a Committee Request

C. Definitions

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra- office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.

Instructions for Responding to a Committee Request

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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