

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

July 20, 2016

The Honorable Charlie Bolden  
Administrator  
National Aeronautics and Space Administration  
300 E Street, SW  
Washington, DC 20546

Dear Mr. Bolden:

For the last several years, the Committee has been working with the Office of Personnel Management to track conversions of non-career, political staff to career positions.<sup>1</sup> Such conversions, sometimes referred to as burrowing, run the risk of favoring political staff at the expense of more qualified career applicants. Conversions also create morale problems, in that qualified career applicants who lose out on promotions to applicants from the agency's political staff can rightly wonder if the process was legitimate. The appointing officials must ensure each conversion of a political appointee to a career position results from a fair and open competition. Hiring decisions must be free from political interference, legitimate, and justified.

In November 2009, OPM expanded the scope of cases it would review involving the appointment of current or former political appointees to career positions. As a result, agencies have been required to seek approval from OPM before appointing a current or former political appointee to a competitive, career senior executive or non-political excepted service position at any level.<sup>2</sup> This form of pre-appointment review provides a meaningful check on the conversion of political appointees.

To assist the Committee with its oversight in this area, please provide the following documents and information as soon as possible, but no later than 5:00 p.m. on August 3, 2016:

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<sup>1</sup> Letter from Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform, to Director Katherine Archuleta, U.S. Office of Personnel Management, Sept. 22, 2014; Letter from Director Katherine Archuleta, U.S. Office of Personnel Management, to Chairman Darrell Issa, H. Comm. on Oversight and Gov't Reform, Oct. 23, 2014.

<sup>2</sup> John M. Berry, Memorandum for Heads of Executive Departments and Agencies: Political Appointees and Career Civil Service Positions, *available at* <http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalID=2588>.

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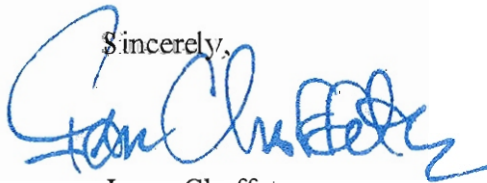
1. All documents showing the number of political appointees who were converted to career positions or non-political excepted service positions from September 1, 2015, to the present. The Committee is particularly interested in documents that break down these positions by agency, title, type of position, date of conversion, salary, and political position being vacated;
2. All documents, including emails, that explain the outcome of each pre-employment review, an explanation for each case not approved, and all corrective action requested by OPM of appointing agencies; and
3. All documents which show a list of each political appointee converted to a career senior executive or non-political excepted service position for which the appointing agency did not provide sufficient information to justify the employment action, broken down by agency, title, type of position, date of conversion, salary, and political position being vacated.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have questions about this request, please contact Katie Bailey of the Majority staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

## Responding to Committee Document Requests

1. In complying with this request, you are required to 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 individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that 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 format 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 File ("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 to the Committee 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.
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 this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. 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), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. 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.
13. 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.
14. 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, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. 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, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

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.

### **Definitions**

1. The term “document” 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” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request 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” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” 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.
6. The term “referring or relating,” with respect to any given subject, means 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” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

**2016-07-20 JEC to 23 Agencies - Burrowing due 8-3 (23 letters) have been sent to:**

Title 1	First Name	Last Name	Position	Agency
The Honorable	Gayle E.	Smith	Administrator	U.S. Agency for International Development
The Honorable	Thomas J.	Vilsack	Secretary	U.S. Department of Agriculture
The Honorable	Penny	Pritzker	Secretary	U.S. Department of Commerce
The Honorable	Ashton B.	Carter	Secretary	U.S. Department of Defense
The Honorable	John	King	Secretary	U.S. Department of Education
The Honorable	Ernest	Moniz	Secretary	U.S. Department of Energy
The Honorable	Sylvia Mathews	Burwell	Secretary	U.S. Department of Health and Human Services
The Honorable	Julian	Castro	Secretary	U.S. Department of Housing and Urban Development
The Honorable	Thomas E.	Perez	Secretary	U.S. Department of Labor
The Honorable	John F.	Kerry	Secretary	U.S. Department of State
The Honorable	Sally	Jewell	Secretary	U.S. Department of the Interior
The Honorable	Jacob J.	Lew	Secretary	U.S. Department of Treasury
The Honorable	Anthony	Foxx	Secretary	U.S. Department of Transportation
The Honorable	Robert	McDonald	Secretary	U.S. Department of Veteran Affairs
The Honorable	Gina	McCarthy	Administrator	U.S. Environmental Protection Agency
The Honorable	Denise Turner	Roth	Administrator	U.S. General Services Administration
The Honorable	Charlie	Bolden	Administrator	National Aeronautics and Space Administration
The Honorable	France A.	Córdova	Director	National Science Foundation
The Honorable	Allison M	Macfarlane	Chairman	U.S. Nuclear Regulatory Commission
The Honorable	Maria	Contreras-Sweet	Administrator	U.S. Small Business Administration
The Honorable	Jeh C.	Johnson	Secretary	U.S. Department of Homeland Security
The Honorable	Loretta E.	Lynch	Attorney General	U.S. Department of Justice
The Honorable	Carolyn W.	Colvin	Acting Commissioner	U.S. Social Security Administration