

House Oversight and Reform
Subcommittee on Government Operations
Hearing: “Document Production Status Update: OPM, FBI, and GSA”
June 27, 2019
Questions for the Record (Majority Members)

Stephen Billy
Deputy Chief of Staff
Office of Personnel Management

Question 1. Provide the basis for redacting the following sections from the June 26, 2019, document production:

- Page 16 titled “Legal Authority (outstanding from 10/25 meeting),” and page 14, which appears to be the outstanding content from the 10/25 meeting that page 16 cites to;
- Page 18 redaction of one name and inclusion of “Margaret Pearson”; and
- Page 22 titled “Legal Concern with Information Sharing Without Agreement: Pending Cybersecurity Incidents-Related Litigation.”

OPM Response:

- The Executive Branch has a strong interest in preserving the confidentiality of its internal deliberations. Frank and open discussion is critical to the decision making process. The passages on page 16 were redacted to protect such discussions and to prevent future deliberations from being chilled. Such protection is particularly important where, as here, it relates to legal advice given to the Agency by its attorneys. The practice of protecting such communications has consistently been followed by Administrations of both parties, and we adhere to it in order to protect future Administrations.
- Margaret Pearson is an OPM employee. We redacted the name of a non-OPM employee to protect any privacy interests that the person’s employing agency might have.
- The information on Page 22 was redacted to preserve sensitive attorney-client information related to ongoing litigation.

Question 2. What is the “Outstanding Issue” with the legal authority as identified in the November 28, 2018, toll gate meeting minutes provided in the June 26, 2019, document production?

OPM Response: The same concerns about the importance of preserving the confidentiality of internal deliberations, particularly those related to legal questions and advice provided to the Agency by its attorneys, apply to this question.

Question 3. In the documents you provided to congressional staff at a briefing on June 19, 2019, Office of Personnel Management (OPM) and Office of Management and Budget (OMB) claim that there will be a nearly \$69 million estimated budget gap at OPM in fiscal year 2020. However, according to the information provided in that same document, the budget gap appears closer to \$65 million. Can you please clearly provide information on the estimated budget gap at OPM for fiscal year 2020, including the base cost of OPM, component “buybacks,” and other efforts that could reduce this budget gap?

OPM Response: NBIB currently contributes \$69 million to OPM common services funding that supports numerous activities for OPM. This \$69 million is the loss of funding OPM referenced in the briefing as needing to be addressed in order to avoid a negative impact on OPM’s mission and personnel. As described in the briefing, this impact is not an acceptable outcome for the Administration. OPM is already taking numerous steps to minimize the impact from this loss of funding to OPM personnel, and we will continue to coordinate with Congress in doing so.

Question 4. Has OPM or OMB explored the possibility of using transfers from the Earned Benefits Trust Fund for the purpose of covering unreimbursed trust fund administration costs to further reduce the existing budget gap? What are the costs and benefits of increasing such transfers?

OPM Response: OPM is analyzing all flexibilities we might be able to utilize to avoid a negative impact to our mission and our people while operating within the Anti-deficiency Act.

The budget gap created by the departure of the NBIB function results from relatively fixed administrative and other overhead costs needing to be covered within a smaller pool of resources.

The amount of resources that OPM can transfer from the Employees Health Benefits Fund, Employees’ Life Insurance Fund, and the Civil Service Retirement and Disability Fund for administrative expenses is generally limited by Congress, with a few exceptions. These limitations, set in annual appropriation Acts, are considered discretionary spending. Increases in the amount of the limitation(s) count against discretionary caps.

The limitation on trust fund transfers has impeded both (i) OPM’s ability to react to changes in workloads associated with administering benefit programs and (ii) its ability to finance process improvements. As such, OPM is exploring whether it is feasible to seek legislative changes to remove these limitations. A key concern is how such a change scores under PAYGO rules, and the level of Congressional interest in enacting these changes.

Question 5. How much has OPM spent on the transition thus far?

OPM Response: OPM has obligated \$5.125m to resources reserved for transition activities as of July 18th.

Question 6. Provide the list of documents that the Committee on Oversight and Reform has asked for in prior document requests, but that do not exist or had not been created as of June 27, 2019.

OPM Response: In order to protect the confidentiality of internal executive branch communications, OPM is unable to provide the Committee with a detailed list of documents. As the Agency has continually expressed to the Committee, it will continue to provide additional responsive documents to accommodate the Committee as decision points are reached and confidentiality concerns are lessened. In addition, senior agency officials are regularly engaged with Congress in formal hearings and briefings to provide information. Following a recent tollgate the Administration briefed Congress and provided informal notice of decisions that were made, with formal communication of those decisions forthcoming. As we have always stated as decisions are made we will quickly engage with Congress to share that information, and we will continue to do so.

Question 7. The Subcommittee can only assess the relevance of any privileges asserted by OPM if OPM provides a record of all documents that are responsive, and the reason for withholding the documents.

- a. Has OPM asserted a privilege over any documents in response to the Subcommittee's request?
- b. Has OPM invoked the deliberative process privilege?
- c. Is it OPM's view that all documents related to the proposed merger plan are deliberative in nature?
- d. Will OPM commit to producing a privilege log to the Subcommittee?

OPM Response: No privileges have been asserted by the Agency. However, OPM has an interest in preserving the confidentiality of internal executive branch deliberations and has withheld documents to protect this interest. The Agency will continue to work to accommodate the Committee's need for information while balancing OPM's own need to protect executive branch confidentiality interests.

Question 8. In the final three months of fiscal year 2019, how is OPM prioritizing its time to ensure proper attention is put toward creating evidence-based options to revitalize OPM since there is no evidence that the OPM and General Services Administration merger is legal?

OPM Response: In the documents previously provided to the Committee pursuant to its request, OPM provided significant data showing the longstanding and structural challenges facing the Agency. The documents also included information providing context for how the Administration's proposal is in line with best practices and long-term trends of national governments, state governments, and private sector "best places to work". We are continuing to engage Members of the House and Senate, and Congressional staff, to provide briefings on OPM information technology and retirement services operations. As we have stated in the past, we

would be pleased to provide additional briefings to Chairman Connolly or any other member of the Committee.

Question 9. How many OPM employees have left the organization in fiscal year 2019? How does this compare to prior years?

OPM Response: Through June 2019, OPM has had 338 separations (including NBIB), which would be somewhat higher than prior years assuming the same number of separations occur over the remainder of the year. In any organization when change is being implemented there will be employee transitions. Not all individuals are comfortable with transition, and we understand the anxiety this kind of change can create. OPM leadership has been incredibly focused on engaging with our workforce and labor representatives to address their concerns and provide them with accurate and timely information.

Question 10. When did OPM, OMB, and GSA first consider the risks of the proposed reorganization of OPM?

OPM Response: The Administration laid out the proposal in 2018 in the “Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations.” This proposal was put forward to address the untenable risks of the status quo, which if left unaddressed will result in continued IT malfunctions, operational degradation, and inadequate cybersecurity improvements. The risk of the status quo is the risk we must address.

Question 11. On June 19, 2019, the Washington Post reported that Acting Director Margaret Weichert “told her staff that she is ‘planning to play chicken with Congress’” to secure approval for the proposed merger plan. Have you ever heard Ms. Weichert say something to this effect? If so, please detail all instances.

OPM Response: I have never heard the Acting Director use that analogy in the context suggested by this question. What I have heard is the Acting Director explain that OPM is facing fundamental structural issues which, if left unaddressed, could have significant impacts on the IT systems used to run the employee benefit programs under OPM’s purview that currently provide benefits to millions of current and former Federal employees and their families.