

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

July 15, 2019

The Honorable Margaret Weichert
Acting Director
Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20405

The Honorable Margaret Weichert
Deputy Director of Management
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Ms. Weichert:

In its last two appearances before the Committee, the Office of Personnel Management (OPM) has failed to justify the Administration's intention to eliminate the agency; provide basic planning documents, including a legal analysis of the authorities required to implement the proposed abolition of OPM; and assure the Committee that moving OPM's policy functions to the Executive Office of the President (EOP) would not reverse more than 100 years of civil service reform.

Under these circumstances, we wish to convey in the clearest possible terms that we oppose the Administration's intentions for OPM.

We reiterate all our previous document requests and now request transcribed interviews with Michael Rigas, Deputy Director of OPM, Dustin Brown, Deputy Assistant Director for Management of the Office of Management and Budget (OMB), and Peter Warren, Associate Director for OMB by July 31, 2019.¹

Congressional Concerns About OPM Dismantlement

At a May 21, 2019, hearing before the Subcommittee on Government Operations, Chairman Connolly rejected the OPM plan on substantive and process grounds, stating that the proposal was "a reckless endgame in search of a rationale."² At a hearing on June 26, the Chairman repeated and reinforced this message saying, "If we have been unclear thus far, let

¹ Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 22, 2019); Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 8, 2019).

² Committee on Oversight and Reform, Subcommittee on Government Operations, *Hearing on The Administration's War on a Merit Based Civil Service* (May 21, 2019) (online at <https://oversight.house.gov/legislation/hearings/trump-s-war-on-a-merit-based-civil-service>).

me take the opportunity right now to clarify that this half-baked proposal is dead on arrival. The Administration's intention to dismantle OPM is irresponsible."³

We have continuously expressed serious concerns about the Administration's reorganization proposal, including concerns about the removal of expertise and merit standards from our federal workforce, as well as the lack of adequate planning and stakeholder engagement undertaken by Administration officials.

We are joined in our concerns by other Members of Congress. Recently, the House of Representatives passed the Financial Services and General Government Appropriations Act for Fiscal Year 2020. The bill includes provisions that prohibit the use of federal funding to reorganize or transfer functions of OPM to the General Services Administration (GSA) or OMB and prohibit furloughs or reductions in force of employees at OPM.⁴

Hearings Raised Further Concerns About Administration's Intentions

At our recent hearings, testimony from you and Stephen Billy, the OPM Deputy Chief of Staff, further called into question the Administration's ability to execute this proposal without significantly disrupting OPM's customers and workforce. We would like to remind you of the following findings from both hearings:

- The Government Accountability Office (GAO) and the OPM's Acting Inspector General expressed deep concerns about the process the Administration used to develop their merger plan. The plan, they said, was unclear and did not follow any best practices for change management.
- Specifically, GAO testified of OPM's leaders:

They have not established outcome-oriented goals, developed a cost-benefit analysis or implementation plans, and have not fully involved or communicated their efforts with the Congress, employees, and other key stakeholders. OPM and GSA also have not shown how they will address management challenges that may affect their ability to successfully reorganize the government's central human capital functions. OMB, OPM and GSA have not identified specific actions, as of May 17, 2019, that can be taken administratively versus those that will require legislative action to reorganize OPM.⁵

³ Subcommittee on Government Operations, *Hearing on Document Production Status Update: OPM, FBI, and GSA* (June 27, 2019) (online at <https://oversight.house.gov/legislation/hearings/document-production-status-update-opm-fbi-and-gsa>).

⁴ H.R. 3351.

⁵ Government Accountability Office, *Government Reorganization: Issues to Consider in the Proposed Reorganization of the Office of Personnel Management* (May 21, 2019) (online at www.gao.gov/assets/700/699242.pdf).

- Mr. Billy acknowledged that the Administration has yet to develop a legal analysis of its plan to move OPM, despite taking actions to initiate it. He stated that the Administration assumes it has the legal authority to move forward. Without a legal analysis, OPM's leaders do not know if their actions violate federal law.
- In documents provided to the Committee on June 25, 2019, the agency continued to redact information related to conversations about the legal authorities they may not possess in relation to any reorganization efforts. Mr. Billy had no clear response as to why this information was redacted. At the hearing, both Republicans and Democrats expressed deep concerns about OPM's continued failure to produce documents needed to appropriately oversee this proposal.
- You repeatedly said that OPM's legacy information technology (IT) systems were outdated and in dire need of repair, but you provided no explanation as to why the move to GSA would improve the technology or its operations. In fact, GAO has warned that moving elements of OPM's IT to GSA could exacerbate problems.⁶
- You stated that OPM would definitely not be ready for any merger among OPM, GSA, and the Executive Office of the President by October 1, 2019, yet the Administration continues to state that it intends to move ahead with parts of the reorganization prior to that date.⁷
- Linda Springer, who served as OPM Director under President George W. Bush, testified that OPM and GSA are fundamentally different—OPM's mission is to serve the men and women who serve the American people while GSA exists as a procurement and real estate agency serving federal agencies. The Administration's proposal unacceptably treats the federal workforce the same as office space and procurement contracts.

Administration Obstructing Congressional Oversight and "Playing Chicken"

The Washington Post reported that OPM has "made it very clear we can't wait without action" and you are "planning to play chicken with Congress" rather than work with Congress to answer questions and enlist support for reforms.⁸

⁶ See Government Accountability Office, *Federal Retirement: OPM Actions Needed to Improve Application Processing Times* (May 2019) (online at www.gao.gov/products/GAO-19-217?source=ra).

⁷ See *OPM Still Lacks Legal Analysis of Proposed Merger with GSA: Lawmakers in Both Parties Expressed Outrage at the Lack of Documents Provided to Support the Trump Administration's Proposal*, Government Executive (June 27, 2019) (online at www.govexec.com/management/2019/06/opm-still-lacks-legal-analysis-proposed-merger-gsa/158076/).

⁸ *The Trump Administration Threatens Furloughs, Layoffs at OPM if Congress Doesn't Let It Kill Personnel Agency*, Washington Post (June 19, 2019) (online at www.washingtonpost.com/politics/trump-administration-threatens-furloughs-layoffs-if-congress-doesnt-let-it-kill-personnel-agency/2019/06/19/b7200fda-9135-11e9-b58a-a6a9afaa0e3e_story.html?utm_term=.2ae76d3c2b81).

The Committee has repeatedly attempted to work with OPM staff to get information that would demonstrate that the Administration performed its due diligence when offering this proposal. But OPM has failed to provide—and in at least one case, create—even basic documents that would allow for oversight of the plan.

On March 22, 2019, more than three months ago, Chairman Connolly sent a letter to OPM requesting 13 categories of documents relating to the Administration’s plan to eliminate OPM.⁹ The documents requested included basic analytical reports, such as a cost/benefit analysis of the planned merger, a risk analysis, and a legal analysis, among other documents.

On May 8, 2019, Chairman Connolly sent a follow-up letter to OPM reiterating the request for all responsive documents and asking for a privilege log for any documents the agency is withholding.¹⁰

At the Subcommittee’s hearing on May 21, 2018, both majority and minority members demanded that OPM provide the Subcommittee with any legislative analysis and cost/benefit analysis of the reorganization proposal. And at the June 26 hearing, both majority and minority members of the Subcommittee again expressed concern about the agency’s lack of documentation to justify their proposal.

The Committee has been informed that as part of OPM’s document production, you intend to provide a compilation of all OPM Inspector General and Government Accountability Office reports related to open recommendations and difficulties at OPM. As Members of the Committee of jurisdiction over OPM, we are aware of and have reviewed these publicly available documents, none of which suggest abolishing the agency. Sending a compilation of existing reports already provided to Congress would not be responsive to our request.

Committee Reiterates Previous Document Requests and Now Requests Transcribed Interviews

To date, OPM’s response to Committee document requests has been wholly inadequate and has failed to provide most of the information that has been requested. As stated at the June 26, 2019, hearing, OPM’s refusal to comply impairs the Committee from fulfilling its constitutionally mandated oversight responsibilities and prevents it from conducting an informed assessment of a plan that would affect the entirety of our government’s 2.6 million federal employees and nearly as many federal retirees, as well as the 8 million family members who rely on OPM to administer their health care benefits.

Recently, the Administration has escalated its refusal to cooperate with congressional oversight and threatened to furlough or terminate 150 career civil servants if Congress does not provide the authority to abolish OPM by October 1.

⁹ Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 22, 2019).

¹⁰ Letter from Chairman Gerald E. Connolly, Subcommittee on Government Operations, et al., to Acting Director Margaret Weichert, Office of Personnel Management (Mar. 8, 2019).

The Committee takes these threats very seriously. Furloughs and terminations would deeply affect Americans who have dedicated their careers to serving the nation. That is why the Committee reiterates its two previous requests for documents. If these documents do not exist, we insist that you inform us of that fact. We continue to seek:

- Any legal analysis generated by any government agency or outside organization of the authority to perform the reorganization, and what would be needed from Congress to accomplish it;
- A list of all authorities and missions of OPM and where these responsibilities would be conducted throughout the reorganization;
- An analysis of how moving OPM components to GSA will improve operations;
- A list of the leadership and team members administering the reorganization;
- The budget effects of moving the National Background Investigations Bureau to the Department of Defense on the remaining parts of OPM (one auditing firm estimates the budget shortfall could range from a \$164 million to just \$1 million);
- A detailed timeline of all ongoing and planned reorganization actions;
- A risk analysis and contingency plans related to the OPM reorganization;
- The plan that details new location and reporting structure for the OPM Director;
- The effects the proposal has had and will have on staff, including employee engagement, staff size, recruitment ability, and the need for reductions-in-force or buyouts;
- A plan to assure GSA's management of OPM's functions and responsibilities;
- Plans to protect sensitive data, including personally identifiable information and personally identifiable health information of millions of federal employees and their families, held by OPM; and
- Alternative plans or options discussed to create a more effective and efficient OPM.

In addition, because of your failure to provide the Committee with documents to inform us of the actions the Administration has taken or plans to take, we must seek this information in other ways. To further our investigation into this reorganization, we request transcribed interviews with three high-level staff at OPM and OMB:

- Dustin Brown, Deputy Assistant Director for Management of OMB;
- Peter Warren, Associate Director for OMB; and
- Michael Rigas, Deputy Director of OPM.

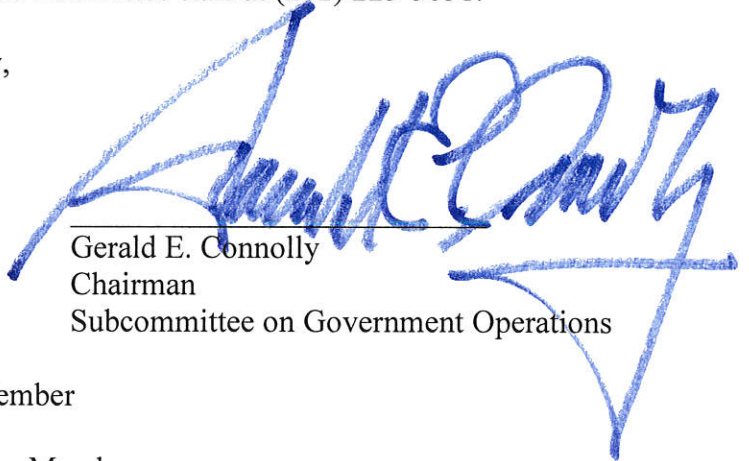
We ask that these three officials be made available for transcribed interviews on a staggered schedule agreed to by both the Administration and the Committee by July 31, 2019.

If you have any questions, please contact Committee staff at (202) 225-5051.

Sincerely,



Elijah E. Cummings
Chairman



Gerald E. Connolly
Chairman
Subcommittee on Government Operations

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Mark Meadows, Ranking Member
Subcommittee on Government Operations