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COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
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WASHINGTON, DC 20515-6100

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September 20, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, D.C. 20202

Dear Secretary King:

With the current administration entering its final months in office, we are mindful of the precedent that exists for increased regulatory actions executed by outgoing administrations. Recent Dear Colleague letters, negotiated rulemaking sessions, and proposed rules originating with the Department of Education (Department) clearly demonstrate this administration fully intends to continue taking unilateral actions until the president's term expires. As a standing committee of the U.S. House of Representatives, the Committee on Education and the Workforce has broad oversight authorities and a responsibility "to exercise continuous watchfulness"¹ over agencies and programs under its jurisdiction. Specifically, House Rule X states:

"Each standing committee shall review and study on a continuing basis the organization and operation of Federal agencies and entities having responsibilities for the administration and execution of laws and programs addressing subjects within its jurisdiction"²

There are two efforts synonymous with a change in a presidential administration that merit congressional oversight. The first is the exponential increase in the number of rules being released. A recent Congressional Research Service (CRS) report entitled "Midnight Rules: Congressional Oversight and Options" highlights several weaknesses attributed to midnight rulemaking. Specifically, CRS noted an "outgoing administration has less political accountability"; rules may not receive the adequate review by agency officials required for a high-quality rule; and rules being hurried through the formal rulemaking process may not receive the same opportunity for public comment as required by statute.³

¹ The Legislative Reorganization Act of 1946 (P.L. 79-601)

² House Rule X(2)(b)(1)(B)

³ Congressional Research Service. Midnight Rules: Congressional Oversight and Options.

The second is an increase in employment status conversion, also known as “burrowing in.” This occurs when an employee in a federally appointed position is converted to a career position in the executive branch. A separate CRS report entitled “Federal Personnel: Conversion of Employees from Appointed Positions to Career Positions in the Executive Branch” highlights several negative consequences of burrowing in. These consequences include limiting merit-based, competitive hiring and promotion, as well as hampering the effectiveness of the agency.⁴ There are also clear regulations in place that must be followed when attempting to convert an employee’s status.

In light of these concerns, please respond to the following questions and requests by October 4, 2016:

1. Since January 1, 2016, how many positions within the Department have been created? Please provide the number of positions created by month in addition to the total number of jobs.
2. For each position created since January 1, 2016, provide the Committee with the date when the position was created and when the position was filled.
3. For all positions created since January 1, 2016, provide the Committee a list of the names of the individuals who filled these positions and whether those individuals were previously political appointees at the Department or any other agency or office within the executive branch, including the White House.
4. How many positions does the Department plan to create from the receipt of this letter to the end of the President’s term?
5. For every position created since January 1, 2016, and for every position the Department plans to create, provide the Committee with the Department’s justification for each new position.
6. Please provide the Committee with a list of draft rules and regulations, final rules and regulations, and any planned guidance the Department plans to release from the receipt of this letter to the end of the President’s term.

⁴ Congressional Research Service. Federal Personnel: Conversion of Employees from Appointed Positions to Career Positions in the Executive Branch

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If you have any questions regarding this letter, please contact Mandy Schaumburg (mandy.schaumburg@mail.house.gov) or Clint Raine (clint.raine@mail.house.gov) with the Committee at (202) 225-6558.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



VIRGINIA FOXX
Chairwoman
Subcommittee on Higher Education and
Workforce Training



TODD ROKITA
Chairman
Subcommittee on Early Childhood, Elementary
and Secondary Education

Responding to Committee Document Requests

1. In complying with this request, you should 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.
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 they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request 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, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
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 should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents 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 should be delivered, one set to the Majority Staff in Room 2181 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 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, 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 terms "employee" or "employees" mean any person or persons working for the Department or OCR in either their designated headquarters or field offices.
6. 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.

7. 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.