

**Post-Hearing Questions for the Record
Submitted to the Honorable Jeff Pon
From Senator Claire McCaskill**

**“The Challenges and Opportunities of the Proposed Government Reorganization on OPM
and GSA”**

July 26, 2018

1. What analyses has the Office of Personnel Management (OPM) conducted to assess the impact of the reorganization plan, including retraining, on the federal workforce? Please provide those analyses. If OPM has not conducted those analyses, please explain how OPM will analyze workforce impacts.

Response: OPM is actively engaged with GSA and OMB to assess the impact of the relevant proposals contained in the OMB June 2018 comprehensive reorganization plan as we jointly develop the specific scope of implementation. A business case/review is currently being prepared to determine how the realignment of OPM functions can create efficiency or result in improved service delivery and program execution.

2. How many public comments did OPM receive pursuant to the May 15, 2017, Federal Register notice?

Response: OPM received 2,738 public comments from the White House/OMB-administered website portal.

- a. Is OPM able to identify how many comments were submitted by individuals and how many were submitted on behalf of organizations? If so, please provide a breakdown of those submissions.

Response: It is not clear which comments were submitted by individuals or on behalf of organizations. The information forwarded to us consisted of spreadsheets of comments that included an “organization” column, but it is not clear whether the individuals who entered information in that section were acting on behalf of that organization or merely entering the organization where they work.

- b. Did OPM establish any policies regarding the intake of comments?

Response: The intake of comments on behalf of Federal agencies was managed via the portal at <https://www.whitehouse.gov/reorganizing-the-executive-branch>. OMB provided OPM with the public comments in cases where the commenter selected “OPM” as an agency for reform or elimination. These comments were reviewed and used in the development of the OPM agency reform plan.

- c. What process did OPM use to analyze these comments? What methods, in particular, were employed to identify and support the proposals that were included in the Administration's plan?

Response: In developing the Agency Reform Plan submission to OMB, a wide range of inputs were considered, including public comments collected, as well as inputs and feedback gathered from interviews and focus groups with more than 50 external stakeholders, which included customers of OPM, Federal agencies, executive councils, advisory groups, affinity groups, and industry thought leaders. Inputs were also collected from OPM employees via an all-employee survey questionnaire, as well as from OPM program owners/executives who reviewed the overall functions of OPM and the core mission/functions of each specific program office. Data from all these sources were reviewed by the OPM senior leadership team. These senior leaders worked through a process to reach consensus and select the most promising proposals to pursue.

- d. Did OPM retain the comments that it received pursuant to the Federal Register notice?

Response: Yes.

- e. Please provide copies of the comments that were received by OPM.

Response: OMB is in the process of redacting the comments for personal privacy and plans to make the comments public shortly.

3. How did OPM solicit input and comments from its employees?

Response: The OPM Acting Director sent an online questionnaire via email to the entire OPM workforce to solicit unfiltered feedback and ideas.

- a. How was that input used?

Response: The majority of the responses from employees were related to process improvements relevant to the respondent's current local work or operational area. The ideas about the operational-level improvements were provided to the relevant program office heads for further consideration and pursuit outside the agency-wide reform plan process. The ideas that were relevant to the broader agency reform plan were considered by the OPM senior leadership where the OPM employee proposals were considered alongside proposals collected from various other sources.

- b. How many comments were received?

Response: Approximately 300 responses were received from OPM employees.

4. In your testimony, you stated that the President’s reorganization proposal is “an opportunity to elevate the Federal workforce management functions” and that in order “to drive real reform, the government needs to elevate Federal workforce policy” by “moving OPM’s policy function into EOP [Executive Office of the President].” Under current law, (5 USC § 1103(a)(7)) the Director of OPM is responsible for aiding and advising the President on federal personnel policy, and during the Clinton Administration, the Director was elevated to a cabinet-level status.

a. Where in the organizational structure of the EOP will the Director and OPM policy functions be moved?

Response: This transition is being considered under a later stage of the OPM efforts and final decisions have not yet been made, however the OPM Director will remain a direct report to the President.

b. Who will the Director report to on a day-to-day basis?

Response: The Director will remain a Director report to the President, and will coordinate efforts with OMB and agency heads as currently happens.

c. Will the move of the policy functions into the EOP come with a cabinet-level status designation for the Director?

Response: This is part of the ongoing conversations with the Office of Management and Budget (OMB).

d. How will the policy functions align or differ from the OMB Office of Performance and Personnel Management, which directs personnel policies and practices across the Federal government and reports to the Deputy Director for Management?

Response: Much as the budget side of OMB coordinates at a high level, PPM helps drive a vision for personnel policies, but that vision is developed with input from the Director of OPM, and implemented and integrated throughout the Federal government through actions taken by the Director of OPM (e.g., , regulations, guidance memoranda and manuals, audits of agency personnel functions, oversight letters, benefit design, and petitions for reconsideration or to intervene in matters presenting issues of significance to the civil service, which help shape operative case law).

e. Has OPM prepared any directives, or has OPM received any directives, to ensure that the OPM Director will retain its independence during the reforms?

Response: OPM has not prepared or received any directives, but the OPM Director will remain an independent voice during these reforms and will fulfil the oath he took upon confirmation.

5. Has OPM conducted a business case analysis for the transfer of Human Resources Solutions (HRS) to the General Services Administration (GSA)? If so please provide that analysis. If not, how does OPM support its contention that it is more effective and efficient to transfer HRS?

Response: OPM and GSA are collaborating on a qualitative business analysis and will share documentation as appropriate during our ongoing engagements with the Committee.

- a. How many federal workers will be affected by this transfer?

Response: HRS currently employs about 425 FTEs; however the final scope of which HRS components will be transferred has not been finalized.

- b. What is the cost of implementation associated with this proposal and what impact will the transfer of HRS have on OPM's budget and operations, including working capital fund contributions and support office functions?

Response: OPM will be finalizing this information as part of the annual budget process.

- c. What is the estimated long-term cost savings achieved by this transfer?

Response: OPM will be finalizing this information as part of the annual budget process.

- d. Will OPM share the information its task force develops on this proposal prior to any implementation?

Response: We look forward to keeping the committee updated on our progress with this merger as appropriate.

- e. How will moving HRS to the General Services Administration (GSA) improve customer service and its ability to meet the mission of the office?

Response: As part of its discussions, GSA and OPM are strategizing how each organization's internal people management and customer service assets can enhance customer service. Meetings with HRS customers will be a key activity for the Interagency Task Force, including obtaining insights about customer expectations (e.g., customer service, product delivery/enhancement, cost savings, speed, etc) concerning the transition of HRS into GSA. OPM and GSA also

anticipate signing a Memorandum of Agreement so HRS maintains a close working relationship with OPM's HR policy organization. In many cases, HRS supports the operationalization of policies and major HR initiatives. OPM and GSA see HRS maintaining this role within GSA after the transfer, as policy and operations, are, in many respects, closely intertwined.

- f. What are the outstanding recommendations from the Office of the Inspector General for HRS and how will this transfer address them?

Response: HRS has two outstanding open recommendations from the Office of the Inspector General. The first is OIG Audit 4A-HR-00-13-055 "Pricing Methodology" Recommendation 5, and the second is OIG Audit 4A-HR-00-15-015 "Audit of the Information Technology Security Controls of the U.S. Office of Personnel Management's GP Plateau Baseline 6 Learning Management System (LMS)," Recommendation 6. Through discussion with GSA's finance team, we have learned that GSA's financial systems do not have the OPM-Enhanced Projects Suite (EPS) capability to perform detailed project costing; therefore, the transfer of HRS into an environment without a system equivalent to OPM's EPS Suite would maintain the vulnerability. OIG Recommendation 6 will be completed and the updated POAM document submitted for closure on next week.

- g. Where did the idea to transfer HRS from OPM to the GSA originate from?

Response: The government reorganization is a collaborative and iterative interagency effort being coordinated through OMB. Ideas are often an outgrowth of conversations among the agencies, not ideas put forth from silos.

- 6. During your testimony, you stated that there is enough separation between your office and the Merit Systems Accountability Group to prevent political decisions from influencing the merit based principles at OPM.

- a. What direction have you provided to the task force to ensure that merit based principles will be upheld during the HRS transfer?

Response: I have consistently put forth direction to my agency that merit system principles are adhered to while any personnel actions are being taken. Actions taken in regard to the government reorganization are no different.

- b. Please provide any documents or communications sent to those responsible for developing and executing the plans that provides guidance on ensuring that merit based principles will be upheld.

Response: The direction to uphold merit system principles is not derived from, or based on, any sole communication or document, it is an ongoing conversation that

I have made clear is a priority to the employees of OPM as the Director of the agency.

7. During your testimony, you stated that the large part of this transfer can be done administratively, but that OPM is examining other authorities.
- a. Specifically, what statutory language or other executive authority is OPM looking to for executing the transfer of HRS to GSA?

Response: OPM is analyzing legal options in coordination with OMB and GSA. Also, we are still exploring what legal authorities may be needed in the future.

- b. What GSA authorities is OPM relying on to executive the transfer?

Response: GSA has proposed executing the transfer under 40 U.S.C. 121(e) and we continue coordination with both GSA and OMB.

- c. Is there a timeline for when OPM will alert Congress to the legal analysis of the transfer and if legislation is needed?

Response: OPM looks forward to updating the committee on our progress with this merger as appropriate in an ongoing dialogue.

8. OPM and OMB have told congressional staff that phase II proposals will include the transfer of retirement and insurance benefits to GSA

- a. What is the strategy for this transfer?

Response: We are currently finalizing details for “stage1” of the overall vision and will be developing detailed strategies for the later stages at the appropriate time.

- b. Has OPM conducted a business case or other analyses regarding this transfer? If so please provide that analysis. If not, how does OPM support its contention that it is more effective and efficient to transfer these functions?

Response: We are currently finalizing details for “stage1” of the overall vision and will be developing detailed strategies for the later stages at the appropriate time. However, we believe great efficiencies can be gained by consolidating operational functions of OPM in an agency whose priority is servicing agencies. Part of the challenge in Phase II will be identifying what aspects of the work performed by Retirement Services and Healthcare & Insurance can be characterized as oriented to policy formulation, regulation, and oversight, and what aspects can be characterized as operational. Similarly, we will need to make

decisions about how to treat activities that, in essence, constitute administrative adjudication functions.

- c. What stakeholders have been contacted or will be contacted?

Response: We have engaged a wide array of stakeholders for input on the government reorganization, including by receiving public comments, and look forward to opportunities to further engage stakeholders in stages that may directly affect them to develop a full view of any perceived or possible obstacles.

- d. When will OMB begin to share data on the cost of this transfer?

Response: Since this question is to OMB, OPM defers to OMB for this question.

- e. What authorities will be utilized when authorizing this transfer?

Response: OPM is still exploring what current legal authorities can be utilized for this transfer.

- f. What will happen to the regulatory and policy functions for retirement, healthcare, and other insurance programs?

Response: This is part of the ongoing conversations; however OPM does not expect significant interruption of services to our customers during the transfer.

- 9. How will you guarantee that your plan to move the Federal Employee Health Benefits Program (FEHBP) to GSA will not disrupt health coverage for the more than eight million federal government employees, retirees, and their dependents?

Response: The transition of the FEHB Program from OPM to GSA will be discussed in a later stage of the reorganization; however preventing significant disruption in service will remain a top priority.

- a. What steps are you proactively taking to account for the difference in expertise required to operate the FEHBP that GSA currently does not possess?

Response: As previously mentioned, the transition of the FEHB Program from OPM to GSA will be discussed in a later stage of the reorg, and we will take steps to ensure components maintain the subject matter expertise necessary as part of the final, detailed plans.

- b. Earlier this year, OPM issued a final rule (8 FR 18399) affecting Service Benefit Plan carriers in an effort to “enhance the quality and affordability of FEHB

insurance offerings” in response to concerns about competition. What analysis led OPM to believe that this regulatory change was necessary given that the only Service Benefit Plan participating in the FEHB covers approximately 65% of the market?

Response: OPM implemented the FEHB Program Flexibilities regulation to correct an asymmetry in rules of the market so that employees and retirees can have plan choices available to them that offer the same number of options wherever they reside. The regulation allows all FEHB Program health plans to operate under the same set of rules, to enable a fair competitive marketplace. Under regulations issued in 2010, all FEHB health plans except the Service Benefit Plan (SBP) and the Indemnity Benefit Plan (IBP) were allowed to offer 3 options of any type, while the SBP and IBP were allowed to offer only 2 options and an HDHP. OPM has determined that there is no legal or practical reason to maintain this restriction.

- c. Similarly, OPM noted in the final rule that it expects that this regulatory change will potentially increase competition between health plans and allow plans to “offer a greater variety of lower cost, higher quality options.” Please provide the analysis that demonstrates why OPM believes that the final rule will have this effect on competition, cost, and quality contrary to the public comments raising concerns about the rule decreasing competition and further consolidating market share.

Response: As detailed in the Expected Impact of Final Changes section of the final Federal Employees Health Benefits Program Flexibilities rule, OPM expects the regulatory change will have a positive effect on market dynamics by potentially increasing competition among health plans. This expectation is based on the assumed impact of the introduction of additional options and on OPM’s focus, as set forth in the agency’s Strategic Plan, on increasing quality and affordability in the FEHB Program. It is not based on predictive data analysis.

10. What are the strategy and timeline for transfer of OPM legacy IT systems? What analyses has OPM conducted to assess feasibility, cost, and modernization for these systems if they are transferred?

Response: OPM is currently working on a timeline to accomplish the migration of IT systems from OPM to GSA and the analysis is ongoing. Centralizing human resources operational functions, including IT, in a single agency would integrate the transactional and employee-centric, service-based functions currently performed by OPM with existing GSA operations, including Federal employee payroll and travel.

- a. In particular, please describe in detail how will GSA provide better IT support for vital programs such as retirement services and the FEHBP when compared to the current operations supported by OPM.

Response: Since this question relates to services GSA provides, OPM defers to GSA for this question.

- b. What is the greater value offered by the reorganization that will ensure no disruption and improve legacy systems beyond existing plans and strategies?

Response: With end-to-end services around the Federal employee lifecycle maintained in one place, considerable operational efficiencies should be attained. Currently, these services are stove-piped, forcing burdensome processes on managers and employees. It is worth noting that HR services are rated last among all mission support services by Federal managers.

11. After E.O. 13843, what policy, program, and oversight role will OPM continue to play in the hiring of administrative law judges at federal agencies?

Response: The EO places the position of administrative law judge (ALJ) in the excepted service and directs OPM to pursue any necessary revisions to its regulations swiftly. By the terms of the order, agencies may begin making Schedule E appointments to the position of ALJ immediately, without prior OPM approval. OPM will promulgate proposed regulations to address any provisions in the regulations that are inconsistent with the Executive Order or use language that is generally inapplicable to the excepted service (e.g., references to the concepts of “probation” or “suitability”). Whether ALJs are in the competitive service or the excepted service, OPM’s regulations continue to govern some aspects of ALJ employment, including those related to reassignments, intra-agency details, interagency loans, senior ALJs, and reductions in force. Like other excepted service appointments, ALJ appointments are generally subject to investigation, a determination of fitness, a determination of eligibility for logical and physical access to agency systems and facilities, and, where applicable, a determination of national security eligibility.

- a. What policies, such as qualification standards and veterans preference considerations, is OPM developing regarding the creation of “Schedule E” positions?

Response: Section 3(a) of the EO places the position of ALJ in the excepted service beginning July 10, 2018. It further states that appointments to the position of ALJ are not subject to any examination or rating requirement, including the procedures of 5 Code of Federal Regulation (CFR) 302, Employment in the Excepted Service, except that an agency must follow the principle of veterans’

preference as far as administratively feasible. Consistent with the requirement in Section 3(a)(ii) of the EO, the minimum qualification and licensure requirement for the position of ALJ is the possession of a professional license to practice law and being authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution at the time of selection and any new appointment (other than of an incumbent ALJ to another ALJ position). For purposes of this requirement, judicial status is acceptable in lieu of “active” status in States that prohibit sitting judges from maintaining “active” status to practice law, and being in “good standing” is also acceptable in lieu of “active” status in States where the licensing authority considers “good standing” as having a current license to practice law. An agency may prescribe additional qualification requirements as necessary. Any agency specific requirements must be provided to potential applicants.

12. What plans does OPM have for the CFC program under the reorganization and how will those plans improve the CFC program?

Response: Currently, OPM does not have any plans to change the CFC program as part of the reorganization proposal.

- a. What has the impact of the revamped Combined Federal Campaign (CFC) had on donations and number of charities participating?

Response: In 2016, Federal civilian, military and postal employees pledged \$167.1 million to the CFC. In 2017, Federal civilian, military, postal employees, and annuitants pledged \$101.4 million and 125,000 volunteer hours to the CFC. In 2017, there were about 8,200 charities that participated. In 2016, there were 19,000 charities that participated.

- b. Please provide figures on participation, contributions, fees, and administrative costs since the CFC Commission recommendations were released.

Response:

Year	Charities Participating	Contributions	Fees	Administrative Costs
2012		\$258,300,000		\$28,223,712
2013		\$209,700,000		\$26,875,069
2014		\$193,200,000		\$26,078,418
2015		\$177,800,000		\$24,507,577
2016	19,000	\$167,100,000		\$25,037,599
2017	8,232	\$101,400,000	\$9,265,130	\$26,037,363

Note: CFC-50 Commission Report released in June 2012. CFC regulations in effect January 2017.