

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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November 23, 2020

The Honorable Wilbur Ross
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

The Honorable Neil Jacobs
Assistant Secretary of Commerce for Environmental Observation and Prediction and Acting
Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administration (NOAA)
1401 Constitution Ave NW, Room 5128
Washington, D.C. 20230

Dear Secretary Ross and Acting Under Secretary Jacobs,

In mid-September, the Department of Commerce (Department) created a new senior-level position within the National Oceanic and Atmospheric Administration (NOAA), the Deputy Assistant Secretary for Environmental Observations and Predictions, and immediately appointed Dr. David Legates to serve in the role as a Schedule C appointee. Two months later, Dr. Legates was detailed to the Executive Director position for the U.S. Global Change Research Program (USGCRP) with a start date of November 12, 2020. Congressional Committees were not given advance notice of the creation of the new position at NOAA or Legates' appointment to it. We have yet to receive any explanation from the Department on the responsibilities of and justification for this new Deputy Assistant Secretary position. Indeed, on November 19, 2020, my staff participated in a call with senior NOAA and Department personnel where no one could provide the Committee with this information. I am concerned that the position was created, and Dr. Legates appointed to it, for the specific purpose of detailing him to USGCRP in order to influence the development of the 5th National Climate Assessment.

As you are aware, Federal law prohibits agencies from creating schedule C positions for the purpose of detailing that person to a White House position.¹ The Office of Personnel Management (OPM) affirmed this limitation in its 2016 Presidential Transition Guide to

¹ Fiscal Year 2020 Appropriations, Financial Services and General Government Report 116-456, Section 712.
<https://www.congress.gov/116/crpt/hrpt456/CRPT-116hrpt456.pdf>

agencies.² The Subcommittee on Global Change Research (SGCR) that directs USGCRP is a part of the National Science and Technology Council, a subsidiary of the Office of Science and Technology Policy within the Executive Office of the President.³ As such, Dr. Legates' appointment as Executive Director appears to be prohibited by Public Law 116-93, the Consolidated Appropriations Act of 2020.

The Government Accountability Office (GAO) has affirmed that hiring employees and assigning them immediately to the White House is an inappropriate use of Schedule C appointment authority.⁴

Given the unusual circumstances of Dr. Legates appointment to NOAA and detail to USGCRP, please provide the answers to the following questions by November 30, 2020:

1. Did the Department or NOAA conduct any analysis to support the requirement for a new Deputy Assistant Secretary position prior to establishing it? If so, please provide any written documentation produced in evaluating the need for this position.
2. Who made the decision to create the new Deputy Assistant Secretary position? Was the Department directed by the Executive Office of the President to create the position?
3. Who originally drafted the position description for the Deputy Assistant Secretary position?
4. Who made the decision to detail Dr. Legates to the Executive Director position at USGCRP?
5. When was the decision made to appoint Dr. Legates to the Deputy Assistant Secretary position?

In addition, please provide the following documents to the Committee by November 30, 2020:

1. The approved position description and the associated certification date used by the Department or NOAA to establish the role of Deputy Assistant Secretary for Environmental Observations and Predictions.
2. Each request for new Schedule C authority must be accompanied by a certification statement signed by the department or agency head and submitted to the U.S. Office of Personnel Management (OPM). Please provide a copy of the certification statement for Dr. Legates' appointment as Deputy Assistant Secretary for Environmental Observations and Predictions.

² <https://www.opm.gov/about-us/our-people-organization/office-of-the-director/executive-secretariat/presidential-transition-guide-2016.pdf>

³ https://www.whitehouse.gov/wp-content/uploads/2020/02/eop_fy21.pdf

⁴ <https://www.gao.gov/assets/220/212233.pdf>

3. A copy of the Memorandum of Understanding between the Department and the body within the Executive Office of the President (USGCRP, OSTP, or NSTC) that articulates the terms of Dr. Legates' detail to USGCRP.⁵

Please provide the following documents to the Committee by December 7, 2020:

All internal and external Department and NOAA communications related to the establishment of the position of the Deputy Assistant Secretary for Environmental Observations and Predictions as well as the communications made in the consideration and appointment of David Legates to this position.

Thank you for your prompt attention to this matter. If you have questions please have your staff contact Janie Thompson of the Committee on Science, Space and Technology at 202-225-6375.

Sincerely,



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space, and Technology

Cc:

The Honorable Frank Lucas
Ranking Member
Committee on Science, Space, and Technology

⁵ See <https://www.commerce.gov/hr/practitioners/ses-policies/non-reimbursable-agreement>