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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

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June 11, 2015

The Honorable Kathryn D. Sullivan
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW
Room 5128
Washington, DC 20230

Dear Administrator Sullivan:

The alleged improprieties of a senior National Weather Service (NWS) official have prompted questions about hiring and contracting practices throughout the National Oceanic and Atmospheric Administration (NOAA). The *Washington Post* recently reported that P. Donald Jiron, the NWS deputy chief financial officer, helped write the job description and set the salary for his own post-retirement consulting post, and then came back to the office a day after his retirement to perform the same job – with a \$43,200 raise.¹ According to a report issued by the Department of Commerce Office of the Inspector General (OIG), Jiron also inappropriately demanded a \$50,000 housing allowance even though, as an outside contractor, he was not eligible for this housing benefit, which was reserved for senior government executives on temporary assignments to NOAA headquarters.² The OIG determined that Jiron’s consulting arrangement as a whole violated Federal Acquisition Regulations, and that Jiron may have also violated federal criminal law.³ The OIG reported that senior agency officials were fully aware of this deal.⁴

The OIG’s finding that this practice may be prevalent throughout NOAA is particularly disconcerting. The investigative report stated that the NWS contract may be “indicative of a routine and troubling practice at NOAA of hiring former employees as contractors for purposes of carrying out similar duties to those they performed prior to leaving federal office.”⁵

¹ Lisa Rein, *Top Weather Service Official Creates Consulting Job—Then Takes It Himself with \$43,200 Raise*, *Watchdog Says*, WASH. POST, June 5, 2015.

² U.S. Dept. of Commerce, Office of Inspector Gen., Investigative Report, National Oceanic and Atmospheric Administration, Investigation into Alleged Contracting Misconduct and Exertion of Improper Influence Involving a Senior National Weather Service Official, No. 12-0447, at 2 (June 2015) [hereinafter OIG Report].

³ See *id.* at 14-15. According to the OIG report, this arrangement constituted a prohibited “personal services contract.” See 48 C.F.R. § 104(a) (“Obtaining personal services by contract, rather than by direct hire [under competitive appointment], circumvents [civil service] laws unless Congress has specifically authorized acquisition of the services by contract.”). Moreover, although the OIG concluded that Jiron’s actions may have violated federal criminal law, prosecutors declined to pursue charges. See OIG Report at 2.

⁴ OIG Report at 3-4.

⁵ *Id.* at 14.

Additionally, the report alleges that Jiron attempted to use his position as a contractor and former senior official to secure a job for his daughter at NWS, subverting federal hiring rules that require competition.⁶

While the motivation for rehiring recently retired employees as contractors may be to avoid losing the expertise of senior staff, the misconduct in this situation shows NWS's apparent disregard for unambiguous federal hiring and contracting rules. The fact that senior agency officials approved this unseemly arrangement, which clearly warranted closer scrutiny, appears to be indicative of a potential agency-wide problem. In order to maintain the integrity of the agency, NOAA officials must avoid conflicts of interest and adhere to and enforce federal hiring and contracting rules. When transgressions occur, the agency must also hold the responsible officials accountable. I am committed to working with you to ensure that these issues are addressed at NOAA. Consistent with the Committee's oversight responsibilities, to assist in evaluating NOAA's degree of compliance with federal hiring rules, and to assess incidents of conflicts of interest, I request that you please provide responses to the following:

1. What is the total number of full-time employees at NWS for the last three fiscal years? What is the total number of contract employees for the same period?
2. What are the top 5 most common positions that contract employees fill within the agency?
3. Of those contract employees, how many have held a prior position at NWS or NOAA?
4. What are the average salaries of NWS contract employees as compared to federal employees with similar job responsibilities for the last three fiscal years?
5. What is the process for drafting a job description for a contract position?
 - a. Who is involved in that process and who is responsible for final approval?
 - b. What protections are in place to ensure current federal employees are not involved in drafting job descriptions for contract positions they intend or hope to fill themselves?
6. What is the approval process for a former federal employee to return to NWS as a contractor? Which senior officials are part of the process?

⁶ *Id.* at 13.

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Please provide your responses as soon as possible, but by no later than June 26, 2015. In addition, please have your staff make arrangements to brief Committee investigative staff on these issues as soon as possible.

The Committee is making this request pursuant to its authority under Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request.

Thank you for your cooperation and prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Thune". The signature is fluid and cursive, with a large initial "J" and "T".

JOHN THUNE
Chairman

Enclosure

cc: The Honorable Bill Nelson, Ranking Member