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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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January 4, 2018

The Honorable Henry Kerner
Special Counsel
Office of Special Counsel
1730 M Street N.W., Suite 218
Washington, D.C. 20036-4505

Dear Special Counsel Kerner:

I write to draw your attention to the conversion of Ms. Leandra English from a senior political appointment at the Office of Personnel Management (OPM) to a permanent, career civil service position at the Consumer Financial Protection Bureau (CFPB). According to information provided by OPM, it appears that OPM hastily approved Ms. English's conversion in the waning days of the Obama Administration based on information that included errors, potential conflicts of interest, and insufficient independent verification.¹

Conversions—also known as “burrowing”—is a practice in which a non-career, political appointee converts to a career position outside of competitive hiring processes. Burrowing threatens to undermine the merit-based principles that serve as the foundation of the civil service because it allows political staff to be favored over potentially more qualified candidates. The Office of Special Counsel is charged with investigating hiring decisions based on political affiliation, which is a violation of civil service laws.²

Following Ms. English's participation in politically-motivated litigation to prevent the President from appointing an Acting CFPB Director,³ I wrote to OPM Acting Director Kathleen McGettigan to request information about Ms. English's conversion from the political staff at OPM to a career position at CFPB.⁴ Although Ms. McGettigan argued that Ms. English's

¹ Letter from U.S. Off. of Personnel Mgmt. Acting Dir. McGettigan to Senator Ron Johnson, Chairman, S. Comm. on Homeland Security and Governmental Affairs (Dec. 13, 2017), encl. at 9 (on file with Comm.) [hereinafter “McGettigan response letter”].

² 5 U.S.C. §§ 1213, 2301-02.

³ On November 28, the district court denied Ms. English's motion for a temporary restraining order. *See* Minute Order and Entry for Proceedings, Motion Hearing, *English v. Trump*, No. 1:17-cv-02534-TJK (D.D.C. Nov. 28, 2017) (denying plaintiff's motion for temporary restraining order for reasons stated on the record); *see* Transcript of Motion Hearing at 22:13-14, 30:17-18, *English v. Trump*, No. 1:17-cv-02534-TJK (D.D.C. Nov. 28, 2017) (denying motion for TRO, in part, because “the plaintiff has not met her burden of success on the merits”); *see generally id.* at 22-30 (rejecting plaintiff's arguments concerning the merits of her claims).

⁴ Press Release, U.S. Sen. Ron Johnson, Chair, S. Comm. on Homeland Security and Governmental Affairs, “Johnson Demands Answers from OPM on Leandra English's Position at CFPB” (Nov. 29, 2017), *available at* <https://www.hsgac.senate.gov/media/majority-media/johnson-demands-answers-from-opm-on-leandra-englishs-position-at-cfpb>.

conversion was “free from political influence,”⁵ the information that she provided in response to my letter demonstrates a flawed vetting process in several respects.

- ***Selection outside of the announced timeline:*** The job announcement for the CFPB position was posted on September 9, 2016, closed on September 20, 2016, and the date of tentative selection for the position was December 7, 2016.⁶ OPM noted that 72 applicants applied for the position,⁷ including Ms. English, and 23 candidates were ultimately deemed qualified and referred for consideration.⁸ The CFPB presented Ms. English’s application for a conversion to OPM on December 13, 2016, nearly three months after the position posting closed and six days after the tentative selection date for the position.
- ***OPM hastily vetted and approved conversion:*** On December 13, 2016, OPM received paperwork necessary to begin its review of Ms. English’s proposed conversion from a political conversion to a career position.⁹ The initial OPM reviewer completed the evaluation by December 21, less than seven working days after receiving the request. By December 30, 2016, 14 working days after paperwork was initially received—and during the holiday season—Ms. English’s conversion passed through four additional levels of staff reviews and was finally approved.¹⁰
- ***OPM did not correct inaccurate documentation about the CFPB position prior to approval:*** OPM originally reported to the Committee in February 2017 that Ms. English converted into a career position in CFPB’s Office of the Chief Operating Officer (COO) with an \$11,000 salary increase.¹¹ Following my letter, in December 2017, OPM amended facts reported to the Committee, claiming that OPM had “erroneously” identified the position.¹² The correct position was chief of staff in the Office of the Director with a salary increase of approximately \$43,000.¹³ Ms. McGettigan blamed the mistake on clerical errors: “In reviewing the case file, [OPM’s Agency Compliance and Evaluation office] found two documents placed the position there [in the Office of the COO] in error rather than in the Office of the Director, which is the correct location of the position.”¹⁴ While OPM asserted that the mistake “did not affect OPM’s substantive review and determination,” the documentation was subsequently demonstrated to contain errors.¹⁵ The CFPB only amended the paperwork *after* Ms. English’s appointment.¹⁶

⁵ McGettigan response letter, *supra* note 1, encl. at 9.

⁶ *Id.* encl. at 1.

⁷ *Id.* encl. at 2.

⁸ *Id.* encl. at 2.

⁹ *Id.* encl. at 1.

¹⁰ *Id.* at 2.

¹¹ *Id.* at n.2; see email from OPM to Comm. staff (Feb. 22, 2017).

¹² *Id.*

¹³ *Id.* encl. at 1.

¹⁴ *Id.* at n.2

¹⁵ *Id.*; *id.* encl. at 1 (identifying the proposed position component as the CFPB’s Office of COO).

¹⁶ *Id.*

- **Substantially similar duties between the two positions:** In evaluating an application to convert from a political position to a career position, OPM examines the job duties of both the political and career positions. Political positions necessarily include duties that require making or approving policy recommendations, or “a thorough knowledge of and sympathy with the goals, priorities, and preferences of an official who has a confidential or policy determining relationship with . . . the agency head.”¹⁷ Although OPM certified that the job responsibilities for Ms. English’s career position at CFPB were different from those of her OPM political position,¹⁸ the CFPB position appears to include duties with characteristics associated with political appointments. These duties include representing the Director before Congress, other agencies, and external stakeholders;¹⁹ conveying the Director’s preferences to other employees;²⁰ supporting and articulating the Director’s priorities;²¹ and participating in personnel decisions.²² Director Cordray—the CFPB’s lone political appointee²³—ultimately selected Ms. English for the chief of staff role.²⁴
- **Potential conflict of interest in the selection process:** In its vetting, OPM noted that “Ms. English worked for the [former] Chief of Staff, Mr. Chris D’Angelo, who reported to CFPB Director, Richard Cordray.”²⁵ Mr. D’Angelo’s move to another position within CFPB created the vacancy into which Ms. English burrowed.²⁶ Mr. D’Angelo served on the interview panels that ultimately resulted in Ms. English’s selection.²⁷ While OPM asserts that his comments of Ms. English were in-line with other interviewers,²⁸ it is impossible to ascertain the influence he may have had on the selection process.
- **OPM did not independently verify CFPB representations:** Because the CFPB is not subject to the government’s human resources requirements, OPM was unable to independently verify CFPB’s representations about Ms. English’s conversion. OPM was unable to certify that the CFPB determined that Ms. English’s qualifications were correct and documented, that the CFPB used a ratings system to provide consistent judgements among candidates, or that the CFPB’s selection process possessed documentation to

¹⁷ U.S. Gov’t, Policy and Supporting Positions (Dec. 1, 2016), at 219 available at <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf> [hereinafter “Plumbook”].

¹⁸ *Id.* encl. at 2.

¹⁹ McGettigan response letter, *supra* note 1, encl. at 5.

²⁰ *Id.*

²¹ See, e.g., blog post of Chris D’Angelo, Chief of Staff, Consumer Financial Prot. Bureau, *Our priorities to ensure a fair marketplace* (Feb. 25, 2016), <https://www.consumerfinance.gov/about-us/blog/our-priorities-to-ensure-a-fair-marketplace/>.

²² Wally Adeyemo, the CFPB’s first chief of staff, “helped to build the [CFPB’s] initial executive leadership team and served as a member of the CFPB Executive Committee.” Ctr. for Strategic & Int’l Studies, Wally Adeyemo, <https://www.csis.org/people/wally-adeyemo>.

²³ Plumbook, *supra* note 17, at 151.

²⁴ McGettigan response letter, *supra* note 1, encl. at 8.

²⁵ *Id.* encl. at 8.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

The Honorable Henry Kerner

January 4, 2018

Page 4

support its decision.²⁹ OPM merely certified the information as reported by CFPB staff, noting that “CFPB [human resources] made all qualification determinations.”³⁰ In fact, OPM could not even provide the date on which Ms. English applied for the chief of staff position through USA Jobs.³¹

Based on the information that OPM provided to the Committee, it may be appropriate for the Office of Special Counsel to review whether the conversion of Ms. English from a political appointment at OPM to a career position within CFPB adhered to the merit system principles. Thank you for your attention to this important matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

²⁹ *Id.* encl. at 4.

³⁰ *Id.*

³¹ Phone call with OPM staff (Dec. 21, 2017).