

Congress of the United States
Washington, DC 20515

August 1, 2019

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro:

We write to request your opinion whether the National Weather Service, U.S. Department of Commerce has violated the Impoundment Control Act. Although Congress has given full funding to the National Weather Service (NWS) annually, along with specific and repeated direction that it use those funds to fill hundreds of critical vacancies, the agency has failed to meaningfully reduce the number of vacant positions. The agency has failed to transmit a special message to Congress either proposing a rescission of this budget authority under 2 U.S.C. § 683, or proposing to defer budget authority under 2 U.S.C. § 684.

The actual number of funded vacant positions in the NWS is in dispute. In a February 28, 2017 response to a Freedom of Information Act request submitted by the National Weather Service Employees Organization, the National Oceanic and Atmospheric Administration (NOAA) reported that there were 4,874 appropriated positions in the NWS in FY 2016 (exclusive of reimbursable positions funded by the budgets of other agencies). This is also the number reported in the FY 2017 NOAA Budget Justification.¹ However, although Congress did not approve any personnel or budget reductions in the interim, last year the agency reported that the FY 2018 appropriations funded only 4,543 positions at the NWS, of which 381 were concededly vacant. In its 2020 “Budget in Brief,” NOAA reported that the NWS has 4,652 positions, which would increase the number of vacancies to nearly 500 positions. However, on May 16, 2019, the NWS Director testified before the House Committee on Science, Space, and Technology that there were 4,623 funded positions in the NWS, of which 429 were vacant.

In May of 2017, the GAO found that the vacancy rate in operational units (defined as those 168 NWS offices that issue forecasts or warnings and that are staffed by emergency-essential personnel) rose from 5% at the end of FY 2010 (211 positions) to 11% at the end of FY 2016 (455 positions).² According to the U.S. Government Accountability Office (GAO), the vacancy rate in NWS operational units had reached a point where NWS employees are “unable at times to perform key tasks.” The GAO also found that NWS “staff experienced stress, fatigue and reduced morale resulting from their efforts to cover for vacancies” due to lack of time off and a loss of training. NWS managers admitted to the GAO “that employees are fatigued and morale is low” and that employees “were demoralized because they had to cover the workload for multiple vacancies.”

¹ See Exhibit 10-6.

² GAO Report No. 17-364, at 15.

Congress has explicitly directed the NWS to fill these vacancies, but it refuses to do so. In its Report accompanying the FY 2018 Appropriations Act, the Senate Appropriations Committee wrote:

*The Committee is very concerned with the continued number of NWS employee vacancies. Given the importance of the NWS mission to protect the lives and property of our Nation's citizens, extended vacancies are unacceptable – particularly when the Committee has provided more than adequate resources and direction to fill vacancies expeditiously for the past several fiscal years. . . NWS is directed to continue to fill all vacancies as expeditiously as possible.*³

The Conference Report later adopted the Senate Language regarding NWS vacancies.

The Senate Appropriations Committee repeated this language nearly verbatim in its Report accompanying the FY 2019 Appropriations Act.⁴ The House Report specifically allocated “not less than \$625,000,000 for salaries and benefits of NWS employees.”⁵ The joint explanatory statement accompanying the FY 2019 Commerce, Justice, Science and Related Agencies Appropriations Act incorporated the House and Senate Report language, and the section of the final FY 2019 bill addressing NOAA appropriations states that any deviation from the amounts designated for specific activities in the joint explanatory statement was subject to the act’s reprogramming requirements.

In its FY 2019 budget proposal, the agency formally sought authority to eliminate 355 positions in the NWS, including 248 front-line forecasters – 20% of all forecasters in the NWS’s 122 forecast offices nationwide. Congress soundly rejected these proposed reductions. The House Appropriations Committee wrote in its Report:

*This Committee expects the National Weather Service to continue to hire in 2019, and to have additional FTEs on board by the end of the fiscal year. The Committee expects that budget requests from the National Weather Service include funds necessary to pay for staff, yet the Committee consistently hears of staffing and management challenges within NWS.*⁶

However, according to reports the agency has provided to the National Weather Service Employees Organization, the number of FTEs at the NWS is essentially unchanged from the beginning of the fiscal year. There were, in fact, fewer non-supervisory, non-managerial employees at the NWS at the close of pay period 12 in 2019 (June 22, 2019) than there were at the close of pay period 16 in 2018 (August 18, 2018), and the NWS has ended each of the past five fiscal years with fewer non-supervisory, non-managerial employees than there were when the fiscal year began. And although the Acting NOAA Administrator and the NWS Director told the House Committee on Science, Space, and Technology in written testimony on May 16, 2019 that

³ S. Rept. No. 115-139, 115th Cong. 1st Sess. at 43.

⁴ S. Rept. No. 115-275, 115th Cong. 2nd Sess. at 45.

⁵ H. Rept. No. 115-704, 115th Cong. 2nd Sess. at 22.

⁶ H. Rept. No. 115-704, 115th Cong. 2nd Sess. at 22.

“there are 252 hiring actions in progress at this time,” the NWS’s Chief Operating Officer testified before Federal Labor Arbitrator Laurence Evans on July 24, 2019 that 70% to 80% of these “hiring actions” were either promotions or reassignments within the NWS, rather than new accretions, which will leave corresponding vacancies in their wake.

The Administration has again proposed in its FY 2020 budget request to eliminate 355 positions, but this does not justify the agency’s failure to fill these vacancies in the interim. “[A]n agency may not withhold budget authority in anticipation of congressional action on a cancellation proposal in the President’s budget request.”⁷

The failure of the National Weather Service to fill its vacant positions (the majority of which are classified as “emergency/essential”) has harmed the public. The NWS conducts a Service Assessment after every major storm event where there are multiple fatalities or a major economic impact, in order to evaluate its performance. Assessment teams, composed of experts from within and outside the NWS, generate a report that serves as an evaluative tool to identify and share best practices in operations and procedures, and to identify and address service deficiencies. Service assessments following twelve major storms that occurred between 2008 and 2017 found that the ability of the NWS to protect lives during these major events was compromised due to already inadequate staffing in operational forecast units.⁸

As the NWS’s most recent budget request demonstrates, it appears that the NWS has affirmatively decided not to backfill its vacancies for policy reasons, despite clear Congressional disapproval and direction to utilize the funding it has been granted to fully staff the agency. As the Acting Comptroller General found in the case of another Impoundment Control Act violation involving the Department of Defense, this “is an attempt [by the agency] to replace the policy decision already made by the Congress with its own.”⁹ A hiring freeze constitutes an impoundment when Congress has directed an agency to use appropriated funds to fill positions.¹⁰ Even if the NWS believed that personnel reductions could be justified as cost savings measure, the plan would still require special messages under the Impoundment Control Act.¹¹

As you are aware, Section 1015(a) of the Impoundment Control Act requires the Comptroller General to report to Congress whenever he finds that an officer or employee of the United States has ordered, permitted or approved a reserve or deferral of budget authority and the President has failed to transmit a special message to Congress.¹² The Act also authorizes the

⁷ B-329739 (Dec. 19, 2018).

⁸ Central U.S. Flooding of June 2008; Southeast U.S. Floods, September 18-23, 2009; Record Floods of Greater Nashville: Including Flooding in Middle Tennessee and Western Kentucky, May 1-4, 2010; Historic Tornadoes of April 2011; Missouri/Souris River Floods of May-August 2011; Middle and Lower Mississippi River Valley Floods of Spring 2011; Remnant of Tropical Storm Lee and the Susquehanna River Basin Flooding of September 6-10, 2011; Hurricane/Post Tropical Storm Sandy, October 22-29, 2012; Historic South Carolina Floods of October 1-5, 2015; Historic Nor’easter of January 2016; October 2016 Hurricane Matthew; August/September 2017 Hurricane Harvey. These reports can be found at: <http://www.weather.gov/publications/assessments>.

⁹ B-241514.5 (May 1, 1991).

¹⁰ B-198103 (Feb. 19, 1981).

¹¹ 64 Comp. Gen. 370, B-211373 (March 20, 1985).

¹² 2 U.S.C. § 686(a).

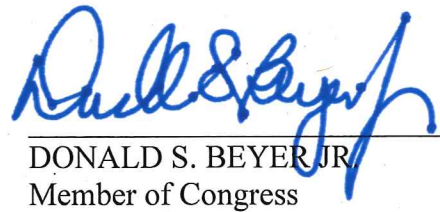
Comptroller General to bring a civil action to require that the funds appropriated by Congress be made available for obligation.¹³

Would you please advise whether the NWS's delay in filling hundreds of vacant positions constitutes a de facto impoundment and, if so, what actions will be taken consistent with your authority under the Impoundment Control Act to remedy the Administration's failure to comply with the Act?

Thank you in advance for your time and assistance.

Very truly yours,


JAMIE RASKIN
Member of Congress


DONALD S. BEYER JR.
Member of Congress


CONOR LAMB
Member of Congress


DANIEL W. LIPINSKI
Member of Congress

¹³ 2 U.S.C. § 687.