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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

November 5, 2013

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The Honorable Sylvia Mathews Burwell
Director
The Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Director Mathews Burwell:

A subpoena was issued to you as Director of the Office of Management and Budget (“OMB”) on September 4, 2013, for documents related to the Obama Administration’s decision to sequester money paid to states under the Secure Rural Schools (“SRS”) program. The subpoena required that the requested documents be provided to the Committee on Natural Resources (“Committee”) no later than 12 noon on September 18, 2013.

On September 26, 2013, OMB produced approximately 160 pages, consisting mostly of email communications between OMB and the U.S. Department of Agriculture (“USDA”) and the Forest Service in January and February 2013. No additional documents have been provided in response to the Committee’s subpoena.

This letter is being sent to inform you the Committee expects to invite you to a hearing, tentatively being planned for November 20, 2013, to consider OMB’s compliance with the September 4 subpoena and to better understand the Obama Administration’s application of the sequester to the SRS program. A formal invitation will follow this letter.

The documents produced to date raise significant questions about the rationale and legal authority behind the Obama Administration’s decision to sequester the SRS money paid to states in January 2013.

For example, in a February 14, 2013 email, a Forest Service official informed OMB that, based on advice from attorneys in the Office of General Counsel, only unobligated money available in the SRS accounts at the time sequestration became effective on March 1, 2013, would be subject to sequester; money already paid to states would not be subject to sequester:¹

3) How does the FS intend to comply with sequestration for SRS? *By multiplying the uniform percentage by the unobligated balance that is in the SRS account as of the sequestration date.* Can funding made available in Title II of SRS be used to cover the savings requirements for SRS as a whole under sequestration? What is the justification for using Title II to cover savings requirements? Please work with the FS legal counsel in responding to these question. [sic] *The FS will not be using Title II of SRS to cover reductions for Titles I and III, because the funds for Titles I and III have already been disbursed. Because those funds will not be in the SRS account on March 1st, they will not be subject to sequestration and need not be covered by Title II allocations (of any other budgetary resources that might remain in the SRS account [italics in original email from Forest Service staff].*

Six minutes later, the same Forest Service official sent a second email informing OMB that it should “hold” before acting on the Forest Service’s earlier response which was sent “before seeing additional developments this afternoon.”² A second email, sent 13 minutes later from the same Forest Service official, informed OMB that, “We will need to get final Dept. review and final [Office of General Counsel] clearance.”³

After almost two weeks had passed and with only days until the sequester would become effective, OMB contacted the Forest Service to get an update on how it planned to apply the sequester to the SRS program.⁴ A USDA budget official responded 10 minutes later to say, “A number of [Secretary’s Office] meetings on this subject took place this afternoon. We should know the result tomorrow morning.”⁵ The following day, the same USDA budget official informed OMB, “More meetings are ongoing this afternoon – stay tuned[.]”⁶

¹ February 14, 2013 at 2:28 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

² February 14, 2013 at 2:34 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

³ February 14, 2013 at 2:47 pm email from Barbara Cooper, U.S. Forest Service to Kathleen Cahill, OMB; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Barbara Cooper, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

⁴ February 27, 2013 at 5:32 pm email from Kathleen Cahill, OMB, to Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service, Kathleen Graham, USDA; re: RE: Impact of Sequestration on Secure Rural Schools.

⁵ February 27, 2013 at 5:42 pm email from Kathleen Graham, USDA, to Kathleen Cahill, OMB, Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service; re: RE: Impact of Sequestration on Secure Rural Schools.

⁶ February 28, 2013 at 1:18 pm email from Kathleen Graham, USDA, to Kathleen Cahill, OMB, Barbara Cooper, U.S. Forest Service; courtesy copy to Susan Spear, U.S. Forest Service, Kathryn Lynn, U.S. Forest Service; re: RE: Impact of Sequestration on Secure Rural Schools.

The USDA and Forest Service rejected the legal advice from its Office of General Counsel attorneys and, on March 19, 2013, letters were sent to states informing them that money already received in FY 2013 would in fact be subject to sequester and that sequestered amounts would need to be returned.

OMB has not indicated when additional documents will be provided. However, documents provided by the USDA indicate that OMB was involved in reviewing letters dated March 19 to states, as well as other communications with USDA concerning the SRS sequester decision.

On September 20, 2013, OMB's Assistant Director for Budget, Courtney Timberlake, met with Committee majority oversight staff, but she was unable to answer a number of questions about how the decision to apply the sequester to the SRS program was made or what steps OMB took to respond to the Committee's oversight requests despite being provided these questions in advance.

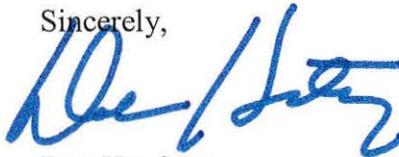
The upcoming hearing will allow for a full examination of the decision to apply the sequester to the SRS program, including the role played by the Secretary's Office and the White House in that decision, as well as OMB's response to the September 4 subpoena.

To be clear, the Committee has not yet received copies of any internal legal analysis or policy alternatives considered in connection to the SRS sequestration decision; communications prior to January 2013 or after February 2013, including those with USDA and/or the Forest Service; drafts or edits of talking points or communications documents; or records concerning penalties for states that failed to repay the sequestered money covered by the subpoena.

It is expected that OMB will fully and promptly comply with the September 4 subpoena without delay and will provide all remaining responsive documents well in advance of the hearing. Please also promptly advise the Committee about any scheduling conflicts that would affect your attendance at a hearing on November 20.

Thank you for your prompt attention to this matter.

Sincerely,



Doc Hastings
Chairman