

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

November 5, 2013

The Honorable Katherine Archuleta
Director
Office of Personnel Management
1900 E St, N.W.
Washington, D.C. 20415

Dear Director Archuleta:

I am writing in hopes that the Office of Personnel Management (OPM) intervenes to stop improper payments from being made to a convicted felon who defrauded the Government during his tenure at the Environmental Protection Agency (EPA). On September 27, 2013, former senior EPA official John C. Beale pled guilty to fraud in the amount of nearly \$900,000, which he stole in the form of unearned salary and benefits.¹ According to court filings, Beale has confessed to collecting pay while not working for over two and a half years.² Yet, I understand that EPA filed Beale's retirement paperwork with OPM on or about April 30, 2013, which credits him with this time and pay not earned.³ While it is outrageous that the law entitles Beale to any portion of his Federal pension,⁴ I am sure you agree that at minimum, Beale should not receive more than the law provides. Accordingly, two separate issues that could inappropriately inflate Beale's pension require your attention.

In the first instance, I am concerned that the years of creditable service EPA submitted to OPM overstate Beale's federal service. Under the Federal Employees Retirement System (FERS), OPM reviews each petition for retirement benefits on a case-by-case basis to determine how many years of service in the federal government should be deemed creditable.⁵ Creditable service is the "total service of an employee or Member [in] the full years and twelfth parts thereof, excluding from the aggregate the fraction part of a month."⁶ If an employee does not

¹ United States v. Beale, No. 1:13-cr-00247-ESH (D. D.C. Sept. 27, 2013); see also Press Release, U.S. Dep't of Justice, *Former EPA Senior Policy Advisor Pleads Guilty to Theft in Scheme that Cost Government Nearly \$900,000* (Sept. 27, 2013), <http://www.justice.gov/usao/dc/news/2013/sep/13-339.html>.

² Statement of the Offense at 6, United States v. Beale, No. 1:13-cr-00247-ESH (D. D.C. Sept. 27, 2013) [hereinafter Statement of the Offense].

³ See *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013).

⁴ Under the Hiss Act, P.L. 83-769, 68 Stat. 1142 (Sept. 1, 1954), as amended, 5 U.S.C. §§ 8311 *et seq.* (1958), a federal employee forfeits their federal employee retirement annuities if convicted of one of the delineated federal crimes relating to national security, such as treason or espionage.

⁵ See OFFICE OF PERS. MGMT., FERS Information, Creditable Service, available at <http://www.opm.gov/retirement-services/fers-information/creditable-service/> (last visited Nov. 5, 2013).

⁶ *Id.*, see also 5 U.S.C. § 8411(a)(1).

serve for longer than three calendar days, no credit may be awarded for this period of separation.⁷ While on paper, Beale was employed with the EPA from June 1989 until he retired in April 2013, Beale has admitted to the U.S. District Court for the District of Columbia that he did not work at EPA for at least two and a half years within that time frame.⁸ As such, Beale's presumed twenty-two years and ten months of service at the EPA should be reduced by the amount of time he has admitted that he did not work. A failure to make this adjustment would result in improper payments to a convicted felon.

In addition to the calculation of creditable service, I also have concerns over how OPM will calculate Beale's average salary that is used to determine his basic annuity. Under FERS, a federal employee is eligible to receive an annuity based on the "high-3" average salary for each year of creditable service.⁹ The "high-3" average salary is computed by taking the highest average basic pay an employee received during any three consecutive years of creditable service within the government.¹⁰ Typically, an employee's highest salary will occur in their final years of service. However, those years coincide with the time period Beale was paid by EPA, but claimed to be working for the CIA.¹¹ As such, it would be improper for Beale's "high-3" to include this period of time. Alternatively, Beale's "high-3" average salary may be based on the salary he received in violation of the statutory limit. According to the EPA Office of Inspector General, from 2007 to 2010, Beale's EPA salary exceeded the statutory maximum for his Senior Leader pay grade.¹² Therefore, if Beale's "high-3" average salary was based on his pay received during this period of time, OPM should ensure that the amount of salary used complies with the statutory limit.

In light of these troubling circumstances where American taxpayers have already been defrauded once, it is imperative that OPM minimize any further injustice. Moreover, Congress is entitled to know what information EPA submitted to OPM and how OPM has processed Beale's benefits to protect against improper payments. Accordingly, I respectfully request that you respond to the following requests no later than November 20, 2013.

1. Will you commit to use your authority to ensure that Beale does not receive a dime of compensation that he is not legally entitled to under the law?
2. Please explain in chronological order, the process OPM used or will use to calculate Beale's retirement benefits from the time his paperwork was submitted until the date of his first disbursement.

⁷ 5 U.S.C. § 8411(a)(2).

⁸ Statement of the Offense, *supra* note 2, at 1, 6.

⁹ See OFFICE OF PERS. MGMT., FERS Information, Computation, available at <http://www.opm.gov/retirement-services/fers-information/computation/> (last visited Nov. 5, 2013).

¹⁰ *Id.*

¹¹ Statement of the Offense, *supra* note 2, at 4-6.

¹² *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. 2-3 (Oct. 1, 2013) (statement of Patrick Sullivan, Assistant Inspector Gen. for Investigations).

Director Archuleta

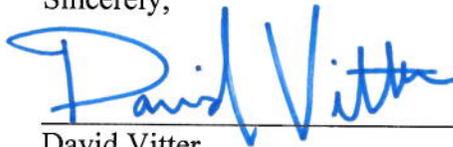
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3. When EPA submitted Beale's retirement paperwork, did the agency inform OPM that Beale was facing criminal charges that may require adjustments to his pension benefits? If so, please identify the date and EPA official who informed OPM.
4. Has EPA contacted OPM to request that your agency adjust Beale's pension payments since he pled guilty? If so, please identify the date and EPA official to inform OPM.
5. Has OPM completed its review of Beale's eligibility for retirement benefits? If so, please indicate when OPM made the determination. If not, please indicate the status of OPM's review as well as its expected date of completion.
6. In processing Beale's eligibility, how many years of "creditable" service did OPM consider? Please indicate the dates of such service.
7. When did OPM first become aware that Beale's "creditable" service was less than EPA originally submitted to OPM?
8. Has OPM determined the years it will use to determine Beale's "high-3" average salary? If so, which three consecutive years did OPM use to determine Mr. Beale's "high-3" average salary?
9. If Beale's "high-3" average salary included those years for which his salary exceeded the statutory threshold, did OPM adjust his "high-3" to reflect the statutory amount? If not, will OPM readjust his "high-3" to reflect the statutory cap?
10. Please provide all documents submitted by EPA pursuant to Beale's retirement.

Your prompt attention to this matter is greatly appreciated. If you have any questions please contact Committee staff at 202-224-6176.

Sincerely,



David Vitter

Ranking Member

Committee on Environment and Public Works