

**FY 2016 Budget Committee Questions for the Record (OMB Director Donovan's Testimony; February 2015)**

## Table of Contents

### Chairman Price

Price-01: Historical Tables in PDF.....	2
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### Rep. Black

Black-01: FAIR Act review.....	3
Black-02: FAIR Act exemption for small agencies.....	4
Black-03: A-76 cost comparisons.....	5
Black-04: Savings from implementing A-76.....	6
Black-05: Insourcing of contracts and contract positions.....	7
Black-06: Methodology for tracking insourcing.....	8
Black-07: Insourcing cost comparisons.....	9
Black-08: Implementation of EO 12615.....	10
Black-09: A-76 cost comparisons for UAS/UAV acquisition.....	11
Black-10: Status of NPRM for commercial UAS/UAV.....	12

### Rep. Schock

Schock-01: Extension of expiring tax provisions.....	13
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### Rep. Mooney

Mooney-01: Report on regulatory costs.....	14
--	----

### Rep. Blum

Blum-01: Funding for geospatial activities.....	15
Blum-02: Taxes on foreign earnings.....	16

### Rep. Westerman

Westerman-01: Spending on ACA Medicaid expansion.....	17
Westerman-02: Medicaid costs if all States expand.....	18
Westerman-03: Budgeting for ACA Medicaid expansion.....	19
Westerman-04: Medicare effects of ACA Medicaid expansion.....	20

### Rep. Lee

Lee-01: Wage stagnation and income inequality.....	21
Lee-02: Ending OCO by 2020.....	22
Lee-03: Timing for transitioning OCO.....	23
Lee-04: Funding for democracy planning in Cuba.....	24
Lee-05: Timeline for embassy in Cuba.....	25
Lee-06: Anti-poverty impacts of investments.....	26
Lee-07: Targeted job training programs.....	27
Lee-08: Funds to address pervasive unemployment.....	29

## Rep. Black

**Section 2d of the Federal Activities Inventory Reform (FAIR) Act (P.L. 105-270) requires each agency to "review the activities" on their FAIR Act commercial activities list. How is OMB working with the agencies to implement this requirement?**

OMB has developed guidance to help agencies implement the Federal Activities Inventory Reform (FAIR) Act and better understand how Federal employee labor is being used to carry out the agency's mission. The basic guidance for implementing the FAIR Act is set forth in Appendix A of OMB Circular A-76. In addition to preparing an inventory of commercial (non-inherently governmental) activities, the Circular also requires agencies to prepare a list of inherently governmental activities performed by government personnel. The Circular provides a format for preparing each inventory and guidance for categorizing activities as inherently governmental or non-inherently governmental. In March 2012, OMB's Office of Federal Procurement Policy (OFPP) issued supplemental guidance addressing the development of agency inventories. See OMB Memorandum M-12-09, available at [http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-09\\_0.pdf](http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-09_0.pdf). Among other things, the guidance alerted agencies to OFPP Policy Letter 11-01, *Performance of Inherently Governmental and Critical Functions*, which clarifies how to determine whether a function is inherently governmental and updated the format for reporting activities to reflect a statutory moratorium on public-private competition.

In addition, OMB has developed a data collection tool to support standardized inventory reporting. The tool allows agencies to conduct multi-stage reviews as data is inputted into the collection tool.

As inventories are developed, OMB works with agencies to address both policy questions (e.g., questions regarding Policy Letter 11-01) and technical questions. However, the agencies remain ultimately responsible for preparing and ensuring the accuracy and completeness of their inventories.

## **Rep. Black**

**In regard to FAIR Act inventories, it's my understanding that Section 840 of the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and the Independent Agencies Appropriations Act of 2006 provided an exemption for small executive agencies with fewer than 100 full-time employees (FTEs) from having to report their FAIR Act inventories. What are these agencies which have these exemptions?**

OMB does not maintain a formal list of small executive agencies that qualify for the exemption in Section 840. However, the American Battle Monuments Commission (excluding foreign nationals employed) and the US Trade Development Agency qualify based on information provided by the agencies.

## **Rep. Black**

**It's my understanding that there are now 1.12 million Federal positions that are commercial in nature. How many of the 1.12 million Federal positions that are commercial in nature have been subject to OMB Circular A-76 cost comparisons?**

Section 737 of Division D of the Omnibus Appropriations Act, 2009, P.L. 111-8 imposed a moratorium on public-private competition "regarding the conversion to contractor performance of any function performed by Federal employees pursuant to Office of Management and Budget Circular A-76 or any other administrative regulation, directive or policy." This moratorium has been continued in subsequent appropriations bills and remains in effect today pursuant to Section 742 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235. As a result, none of the commercial positions identified in agency inventories have been subject to public-private competition since FY 2009. However, some positions may have been competed under OMB Circular A-76 prior to the moratorium.

## **Rep. Black**

**For each Fiscal Year since the Obama Administration took office, what is your data on the savings achieved each year by implementing OMB Circular A-76 cost comparisons?**

As explained in the response to Question 3, there has been a statutory moratorium since 2009 on use of OMB Circular A-76 to conduct public-private competitions and make cost comparisons between public and private sector costs to select a source for performing work. As a result, there is no data on savings achieved through the use of Circular A-76.

## **Rep. Black**

**Since 2009, how many contracts and contracted out positions have been insourced?**

OMB does not track the insourcing of contracts and contracted out positions. However, if an agency insources work, this work would be identified on the agency's inventory of activities performed by federal employees.

## **Rep. Black**

**What is the methodology for agencies to be tracking insourcing?**

OMB does not track the insourcing of contracts and contracted out positions. However, if an agency insources work, this work would be identified on the agency's inventory of activities performed by federal employees.



## **Rep. Black**

**Does OMB conduct a "reverse A-76" to justify insourcing? What are the savings from doing "reverse A-76" for insourcing?**

If an agency is considering the insourcing of work currently performed by a contractor, where performance by either sector would be suitable (e.g., the work is not inherently governmental and human capital considerations do not compel performance by Federal employees), OMB guidance states that agencies should perform a cost analysis that addresses the full costs of government and private sector performance and provides "like comparisons" of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization. See OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce*, Attachment A (July 29, 2009), available at <http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda-fy2009/m-09-26.pdf>. Several agencies, including the Departments of Defense and Homeland Security, have developed additional guidance to address the use of cost comparisons and OFPP has stood up a working group to evaluate government-wide guidance based on agency experience to date, and the best methodologies for identifying savings. OMB does not track savings from insourcing.

## Rep. Black

**Please describe how OMB is implementing Executive Order 12615? And in particular, the requirement to "Ensure that new Federal Government requirements for commercial activities are provided by private industry, except where statute or national security requires government performance or where private industry costs are unreasonable." Since 1999, when the commercial positions were 850,000, and now that they have grown to 1.12 million, what are you doing to implement E.O. 12615?**

When OMB Circular A-76 was last revised in 2003, the prior Administration moved away from the presumption set forth in E.O. 12615 and earlier versions of the Circular that the government should not compete with the private sector for work to meet its own needs. Instead, the 2003 Circular focused on public-private competition that allows agencies to determine the best service provider, whether it be federal employees or contractors. See 68 Fed. Reg. 32134 at 32136 (May 29, 2003), available at [http://www.whitehouse.gov/sites/sites/default/files/omb/assets/omb/fedreg/rev\\_a76\\_052903.pdf](http://www.whitehouse.gov/sites/sites/default/files/omb/assets/omb/fedreg/rev_a76_052903.pdf). Although Congress imposed a moratorium on public-private competition and the use of OMB Circular A-76 for these purposes, OMB and agencies have taken a number of steps to strike an effective balance between federal employees and contractors in the performance of the government's mission. For example, through strategic human capital planning, agencies have been working to ensure they have a sufficient number of federal employees performing functions that, while not inherently governmental, are critical or core to a particular agency's mission. Simultaneously, agencies have worked to strengthen the capabilities of the acquisition workforce so that taxpayers receive best value when work is performed by contractors.

The important role that federal contractors continue to play in effective mission delivery was underscored by OFPP in a recent memorandum outlining a series of steps the Administration is taking to create a more innovative, efficient, and effective acquisition system to support the needs of a 21<sup>st</sup> century Government. See *Transforming the Marketplace: Simplifying Federal Procurement to Improve Performance, Drive Innovation, and Increase Savings* (December 4, 2014) available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/simplifying-federal-procurement-to-improve-performance-drive-innovation-increase-savings.pdf>.

## **Rep. Black**

**With the advent of Unmanned Aerial Systems/Unmanned Aerial Vehicles (UAS/UAV), what is OMB doing to assure Federal agency compliance with OMB Circular A-126 (Section 6.b.) which requires an agency to conduct an OMB Circular A-76 cost comparison prior to acquiring an aircraft, manned or unmanned?**

In accordance with the statutory moratorium on the use of Circular A-76 to compare public and private sector costs through public-private competitions, agencies do not perform A-76 cost-comparisons when acquiring an aircraft under Circular A-126. However, as part of the capital planning process for government aircraft, agencies analyze alternatives with cost being a major factor in the analysis. The analysis is summarized in a business case along with other information relevant to the proposal. The Interagency Committee for Aviation Policy (ICAP) oversees the process. In addition, OMB revised Circular A-11 (Preparation, Submission and Execution of the Budget) to support the capital planning process for government aircraft.

## **Rep. Black**

**It is generally understood that the Notice of Proposed Rulemaking (NPRM) from FAA for commercial UAS/UAV has been submitted to OMB. What is the status and when I can expect the release of this proposal?**

OMB concluded review of the Department of Transportation's Federal Aviation Administration proposed rule, titled "Operation and Certification of Small Unmanned Aircraft Systems on February 13th, 2015, and FAA published the proposed rule for public comment in the Federal Register on February, 23, 2015.