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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

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August 16, 2010

Mr. Gene L. Dodaro  
Acting Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

I respectfully request that the Government Accountability Office (GAO) investigate the legality of certain public relations and propaganda activities of the Department of Health and Human Services (HHS). During the Obama Administration, HHS has expended appropriated funds to (1) contract with an individual who covertly promoted the President's health care plan, and (2) finance a purely partisan television commercial touting health care reform and Medicare. GAO should investigate whether these activities violate appropriations act language<sup>1</sup> and relevant sections of the United States Code.<sup>2</sup>

GAO has historically deemed expenditures of appropriated funds to be unlawful in cases where an activity is purely partisan in nature or where the propaganda is covert.<sup>3</sup>

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<sup>1</sup> Division F, Title V, Section 503(a)-(b), Departments of Labor, HHS, and Education Appropriations Act, 2009, as enacted by Section 5, Omnibus Appropriations Act, 2009, Pub. L. 111-8, 123 Stat. 524, 802 on March 11, 2009. SEC. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself; SEC. 503. (b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

<sup>2</sup> 18 U.S.C. § 1913, which prohibits the use of appropriated funds for activities that directly or indirectly are "intended or designed to influence in any manner a Member of Congress, to favor or oppose ... any legislation or appropriation by Congress ...." Title 18 additionally prohibits federal employees from using appropriations to pay for any "personal services, advertisement, telegram, telephone, letter, printed or written matter ...."; see also, 5 U.S.C. § 3107, which makes it illegal to use appropriated funds "to pay a publicity expert unless specifically appropriated for that purpose."

<sup>3</sup> Kevin Kosar, "The Law: The Executive Branch and Propaganda: The Limits of Legal Restrictions," *Presidential Studies Quarterly* 35, no. 4, Dec. 2005, citing U.S. General Accounting Office, *Decision of the Comptroller General*, B-223098, Oct. 10, 1986, pp. 8-9; and U.S. Government Accountability Office,

HHS used appropriated funds to develop and execute the following partisan and covert public relations and propaganda initiatives:

### 1. Editorials by a Department of Health and Human Services Contractor

In March 2009, the Department of Health and Human Services (HHS) contracted with Jonathan Gruber for “technical assistance.”<sup>4</sup> Gruber, an MIT health care economist, was contracted to estimate changes in insurance costs and coverage under the President’s health plan.<sup>5</sup> For that, HHS paid Gruber \$297,600.<sup>6</sup> He was also paid \$95,000 for another job by HHS.<sup>7</sup>

While under contract with HHS, Gruber authored several editorials advocating on behalf of the President’s health care plan. Gruber was frequently used as a source for journalists writing about health care. Gruber’s status as a paid consultant to HHS was not disclosed in interviews with *Time*, the *Washington Post*, the *New York Times*, the *New Republic*, the *Atlantic Monthly*, and elsewhere.<sup>8</sup> The Administration subsequently touted articles describing Gruber’s findings to increase support for the President’s health care plan.<sup>9</sup>

Additionally, Gruber did not disclose his status as a paid consultant when he testified before two Senate committees responsible for health care legislation.<sup>10</sup> Gruber’s financial relationship with HHS did not become widely known until he wrote a commentary for the *New England Journal of Medicine*, which has a more stringent disclosure policy than the aforementioned media outlets.<sup>11</sup>

By failing to clarify the role of HHS in financing and disseminating his health care study, it appears Gruber engaged in covert propaganda activities that GAO has historically deemed unlawful.<sup>12</sup> In response to a letter from Senator Frank Lautenberg

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*Application of Anti-Lobbying Laws to the Office of National Drug Control Policy's Open Letter to State Level Prosecutors*, B-301022, Mar. 10, 2004.

<sup>4</sup> Op-ed, *Health Experts and Double Standards*, WALL ST. J., Jan. 14, 2010 [hereinafter WSJ Op-ed].

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Kate Pickert, *Jonathan Gruber on the Government Payroll*, TIME, Jan. 8, 2010.

<sup>9</sup> WSJ Op-ed; see also Megan McArdle, *Brownstein on Gruber*, THE ATLANTIC, Online Ed., available at <http://www.theatlantic.com/business/archive/2010/01/brownstein-on-gruber/33195/> (last visited Apr. 22, 2010).

<sup>10</sup> Letter from Senator Charles Grassley to HHS Secretary Kathleen Sebelius, Jan. 12, 2010.

<sup>11</sup> *Id.*

<sup>12</sup> In 2004, the Bush Administration paid Armstrong Williams \$240,000 to promote the No Child Left Behind Act (NCLBA) on his nationally syndicated television show and to urge other journalists to do the same.<sup>12</sup> In response to a request for an opinion from Congress, GAO found that the Department of Education contracted for Williams to comment regularly on NCLBA “without assuring that the Department’s role was disclosed to the targeted audiences. This violated the publicity or propaganda prohibition for fiscal year 2004 because it amounted to covert propaganda.” U.S. GAO, *Department of Education - Contract to Obtain Services of Armstrong Williams*, B-305368, Sept. 30, 2005.

and Senator Edward Kennedy, GAO ruled on September 30, 2005 that a Department of Education contract with Armstrong Williams violated the publicity and propaganda restrictions because Mr. Williams “comment[ed] regularly on the No Child Left Behind Act without assuring that the Department’s role was disclosed to the target audiences. This violated the publicity or propaganda prohibition for fiscal 2004 because it amounted to covert propaganda.”<sup>13</sup>

I request that GAO consider the contract between HHS and Dr. Gruber to determine whether it violated the publicity or propaganda prohibition for fiscal year 2009. Additionally, please determine if the Department violated the Antideficiency Act, 31 U.S.C. section 1341.

## **2. HHS Ad Buy to Promote Health Care Reform and Medicare**

In mid-July 2010, HHS launched a cable television ad featuring 84-year-old and influential actor Andy Griffith promoting both Medicare and the Democrats’ new health care reform law.<sup>14</sup> According to the *Associated Press*, the ad is set to run on channels seniors tend watch, such as the Weather Channel, CNN, Hallmark and Lifetime.<sup>15</sup> In the ad, Mr. Griffith tells viewers:

This year, as always, we’ll have our guaranteed [Medicare] benefits. And with the new healthcare law, more good things are coming. Free check-ups, lower prescription costs and better ways to protect us and Medicare from fraud. ... I think you’re gonna like it.<sup>16</sup>

The ad was paid for with appropriated funds by HHS, which administers Medicare and Medicaid. The ad buy reportedly cost HHS \$700,000.<sup>17</sup> In addition to buying time on cable networks popular among seniors, the ad is also featured prominently on the HHS and White House websites. By releasing the ad in July of an election year, the Administration created the appearance that it was designed to effect general elections by convincing seniors to appreciate one of the Democrats’ major legislative initiatives.

HHS appears to have used appropriated funds in a partisan attempt to target seniors in advance of the 2010 election cycle. Therefore, I request that GAO determine if the “Andy Griffith ad” violated the publicity or propaganda prohibition for fiscal year 2010.

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<sup>13</sup> GAO B-305368.

<sup>14</sup> Mike Lillis, *GOP senators want HHS to yank Andy Griffith ad*, THE HILL, Aug. 3, 2010.

<sup>15</sup> *Andy Griffith’s new role: pitching health care law*, Assoc. Press, July 30, 2010.

<sup>16</sup> Mike Lillis, *GOP senators want HHS to yank Andy Griffith ad*, THE HILL, Aug. 3, 2010.

<sup>17</sup> *Andy Griffith’s new role: pitching health care law*, Assoc. Press, July 30, 2010.

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On April 6, 2005, House Committee on Government Reform Ranking Member Henry Waxman asked GAO to assess Bush Administration efforts that raised questions about whether the Administration inappropriately used federal resources to rally political support for efforts to privatize Social Security.<sup>18</sup> In response, GAO provided a 10-page report in August 2007 assessing the costs associated with the Bush Administration's efforts to promote program reforms.<sup>19</sup> In addition to ruling on the legality of the aforementioned publicity initiatives paid for by HHS using appropriated funds, please also audit the true cost of those initiatives.

Thank you for your attention to this important matter. Enclosed for your ready reference is an August 16, 2010, Committee on Oversight and Government Reform Minority Staff Report detailing these and other inappropriate and unlawful public relations and propaganda initiatives. Please contact Jonathan Skladany of the Committee staff at (202) 225-5074 with any questions about this request.

Sincerely,



Darrell Issa  
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Enclosure

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<sup>18</sup> Letter from Rep. Henry Waxman to Comptroller General David Walker, Apr. 6, 2005.

<sup>19</sup> U.S. Government Accountability Office, *Social Security: Costs Associated with the Administration's Efforts to Promote Program Reforms*, GAO-07-621R, Aug. 10, 2007.