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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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October 27, 2003

HENRY A. WAXMAN, CALIFORNIA,
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BERNARD SANDERS, VERMONT,
INDEPENDENT

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Secretary:

I am writing because of my continuing concern that the Department of Health and Human Services (HHS) may be inappropriately using its auditing authority to penalize groups who criticize, or do not share the same ideology as, the Bush Administration. The recently released FY 2004 Work Plan for the Office of the Inspector General (OIG) at HHS again raises the specter of the selective use of audits against organizations that do not meet the Administration's ideological litmus test.

As I wrote to you on August 14, 2003, the appearance that audits are being used to harass certain types of organizations has been created by repeated audits and program reviews of HIV/AIDS prevention programs. The groups that appear to be singled out for repeated audits are those who provide evidence-based programs that teach both abstinence and safe sex as means to avoid unwanted pregnancy and sexually transmitted diseases ("comprehensive programs"). At the same time, groups that support the Bush Administration policy of teaching only abstinence and providing no information on safe sex ("abstinence only") appear to go unaudited by HHS. In my August 14 letter, I specifically described the experience of one HIV prevention group that provides comprehensive education and that had been required to open its books three times in the previous year.

It now appears that HHS is planning even more audits of groups that teach safe sex practices. The FY 2004 Work Plan for the OIG states that the OIG will conduct a comprehensive review of HIV/AIDS programs and activities at the Centers for Disease Control and Prevention (CDC). This is to include a review of whether grantees and subrecipients implement CDC program activities in accordance with federal guidelines. Most of these CDC grantees provide comprehensive HIV prevention education, including education on safe sex practices.

The Honorable Tommy G. Thompson
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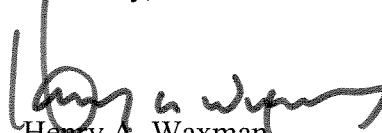
I am concerned that these new audits may be politically motivated. For this reason, I renew my request for an explanation of how HHS is making audit decisions. Previous requests for this information dated December 18, 2002, and August 14, 2003, have gone unanswered.¹ In addition to the information requested in those letters, I ask that you provide me with a complete list of the HIV prevention organizations that will be audited by the OIG pursuant to the 2004 Work Plan.

I would also like to know whether the OIG audits will include any abstinence-only programs. I understand that although most CDC grantees provide comprehensive HIV prevention education, at least two grantees provide abstinence-only programs. There are also many abstinence-only grantees funded through the Special Projects of Regional and National Significance (SPRANS) program in the Maternal and Child Health Bureau, as well as abstinence-only programs receiving grants through the Health Resources and Services Administration and the Office of Population Affairs. If HHS is not misusing its auditing authority, these abstinence-only groups should be included in the audits.

These are not complicated requests, making your previous reluctance to answer my inquiries difficult to understand. I request that you address this important matter promptly and direct your staff to provide the requested information by November 7, 2003.

If your staff has any questions, please ask them to contact Ann Witt ((202) 225-3976) of my staff.

Sincerely,



Henry A. Waxman
Ranking Minority Member

¹ Copies of these letters are attached.

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DAN BURTON, INDIANA
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August 14, 2003

HENRY A. WAXMAN, CALIFORNIA,
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BERNARD SANDERS, VERMONT,
INDEPENDENT

The Honorable Tommy G. Thompson
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Secretary:

I am writing regarding the growing concern that the Department of Health and Human Services (HHS) is arbitrarily asserting the power to conduct audits and other program reviews and that an ideological test is determining whether grantees in the HIV/AIDS prevention program are audited.

Although audits are a critical tool in ensuring that taxpayers' dollars are being well spent, they should never be used to harass or intimidate legitimate organizations that are complying with federal requirements. Unfortunately, HHS's recent audit decisions are creating at least the perception that this authority is being abused.

This perception was reinforced by your November 27, 2002, letter that confirmed that the HHS Office of the Inspector General (OIG) was only auditing those programs that provide comprehensive prevention education and was not auditing any of the well-funded abstinence-only programs.¹ Moreover, I have just learned that in the latest round of auditing decisions, two organizations (the Sexuality Information and Education Council of the United States and Advocates for Youth) that provide comprehensive, evidence-based programs designed to help young people protect themselves against HIV/AIDS, STDs, and unintended pregnancy, will be scrutinized.

The facts relating to Advocates for Youth give cause for concern. Two years ago, an internal HHS memo identified the group as "critics of the Bush Administration" because it had opposed the President's abstinence-only policy.² Shortly thereafter, several of my Republican

¹Letter from HHS Secretary Tommy G. Thompson to Rep. Henry A. Waxman (Nov. 27, 2002). This letter was in response to Rep. Waxman's October 21, 2002, letter to Secretary Thompson.

²*Administration Promoting Abstinence*, Washington Post (July 30, 2001).

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colleagues asked the Centers for Disease Control and Prevention (CDC) to audit Advocates for Youth.³ In January 2003, GAO, at the request of House Republican Members, also obtained copies of Advocates for Youth's financial records.⁴

CDC has now informed Advocates for Youth that it will be subject to a weeklong, on-site audit that would commence in August. In the case of Advocates for Youth, CDC wrote that because of a congressional inquiry, there was an "emergent need" to investigate the "possible misuse of grant funds for lobbying efforts."⁵ CDC's audit plan identified two deficiencies in Advocates for Youth's files. The first deficiency cited is the lack of financial statements in the files of one of their grants. However, when Advocates for Youth asked CDC about this citation, CDC told Advocates for Youth that, in fact, these financial statements are not due until December 29, 2003.⁶

The second problem CDC noted with Advocates for Youth's file is the absence of a CPA-consultant agreement.⁷ According to Advocates for Youth, they did in fact have a CPA-consultant agreement in 2000 and the CPA firm continues to provide them pro bono services as needed. In addition, Advocates engages a separate CPA firm to conduct an annual audit that includes a financial and federal award compliance examination.

This audit appears to be based on misunderstandings. As explained above, the two problems identified by CDC in their audit plan are not, in fact, deficiencies in Advocates for Youth's accounting. My understanding is that Advocates for Youth spends none of its federal grants on lobbying. Overall, in FY 2003, the organization spent \$153,270 of its \$4,049,467 budget on lobbying.⁸ For nonprofit organizations the Internal Revenue Service permits this amount, which is less than 4%.

³Letter from Rep. Joseph Pitts et al. to HHS Secretary Tommy G. Thompson (Sept. 18, 2003).

⁴General Accounting Office, *Federal Funds Spent by Selected Organizations* (May 16, 2003).

⁵Centers for Disease Control and Prevention/Procurement and Grants Office/Oversight and Evaluation, *Post-Award Grantee Evaluation Plan, Advocates for Youth* (July 20, 2003).

⁶E-mail Communication from CDC to Advocates for Youth (Aug. 6, 2003).

⁷Centers for Disease Control and Prevention/Procurement and Grants Office/Oversight and Evaluation, *supra* note 5.

⁸E-mail communication from Advocates for Youth to congressional staff (Aug. 7, 2003).

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While Advocates for Youth will have opened its books three times in the last year, it appears that comparable organizations that routinely support Bush Administration policies have not experienced any such review. In short, whether a group believes that abstinence is the only acceptable means of achieving AIDS prevention seems to be the determining factor in these auditing decisions.

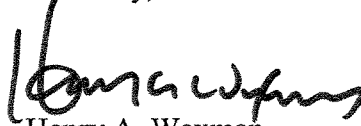
I have previously asked for a full accounting of HHS's audits of comprehensive prevention programs and of abstinence-only programs. HHS provided a partial response to my request, covering only the activities of the OIG, and then refused to provide any information in response to my followup request. Accordingly, I ask that you provide me with the following information:

- (1) A complete list of all audits, program reviews, reviews of financial records, or any similar types of reviews (however labeled or denominated) conducted since January 2001 by CDC (or any other component of HHS) of HIV/AIDS prevention programs, comprehensive sex education programs, and abstinence-only programs funded in whole or in part by HHS.
- (2) The rationale for each such audit or similar type of review, including a description of whether it was routine and periodic or specially conducted.
- (3) Any policies, regulations, or other written standards that HHS follows in determining which organizations to audit or review.

I am resisting reaching any final conclusions until I receive the information that I have requested. It should be obvious, however, that it would be grossly inappropriate and a blatant abuse of power to use federal audits to penalize individual groups that are ideologically incompatible with your views. Congress and the American people would never tolerate such a policy at the Internal Revenue Service, and I would hope it has no place at the Department of Health and Human Services.

Please have your staff provide the requested information by August 29, 2003, and don't hesitate to contact me or Ann Witt of my staff if any additional information is needed.

Sincerely,



Henry A. Waxman
Ranking Minority Member

Congress of the United States
Washington, DC 20515

December 18, 2002

The Honorable Tommy G. Thompson
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Thompson:

On October 21, 2002, twelve House members wrote to you expressing concern that scientific decision making at HHS is being subverted by ideology and that scientific information that does not fit the Administration's political agenda is being suppressed. We have your November 27 response to that letter. All of the undersigned members share the concerns highlighted in the earlier letter, and are writing because we find your response unsatisfactory in certain respects.

We would therefore like to follow up on some of the answers you provided. In some cases, you did not provide the information we requested. Other answers require further explanation.

Question 1

In question 1, we requested: *"All instances in which scientific information has been removed from any HHS website since January 2001 on the basis of a request from someone inside or outside the Department, the name of the requester, and the reason for the removal. If there was a scientific basis for the removal, please describe it in detail. For example, if the information was perceived to be scientifically or methodologically flawed, please provide a detailed description of the perceived flaws, and efforts—if any—to correct the flaws and restore the information to public availability on the website."*

You responded with a description of your reasons for removing the three examples of missing scientific information that we had already identified in our letter. You did not state whether these three were the only cases in which scientific information has been removed from HHS websites since January 2001. You also did not address whether you removed the three examples in response to a request. Therefore, we reiterate our request for "all instances in which scientific information has been removed from any HHS website since January 2001 on the basis of a request from someone inside or outside the Department, the name of the requester, and the reason for the removal."

We question also your explanation of the removal from the NCI website of a discussion of NCI's findings that no relationship has been shown between abortion and breast cancer. Your response said that the information was removed "to review the accuracy and completeness of the content." While we applaud your desire to make sure that information on your websites is

The Honorable Tommy G. Thompson
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accurate and up-to-date, scientific knowledge in most areas of biomedical research is rapidly evolving. This phenomenon is certainly not limited to information about abortion and breast cancer. If all scientific information on HHS websites were being treated even-handedly, your policy would require frequent reappraisal (and presumably removal) of much of the scientific content of NIH websites. Yet, your response identified no instance in which material has been taken down other cases where the information related to abortion, sex education programs, and condom effectiveness.

We also find unpersuasive your explanation of the removal of information on the CDC “Programs that Work” website, concerning curricula that have been proven effective in helping young people avoid risky behaviors, including risky sexual behavior. You first state that the all of this information was removed because “it was determined that other proven programs that are effective in helping young people avoid risky sexual behavior ought to be added.” You state later, however, that this information is not being permanently removed, but “merely supplemented and updated.” At no point do you state that the existing material was either scientifically or methodologically flawed. Thus, it appears that you have found no inaccuracy in the information that was taken down from the “Programs that Work” website.

We therefore ask that you explain why it was necessary to deprive the public of accurate, educational, and scientifically proven information on a matter of critical importance to the health of our young people while additional material was being prepared for the site.

We are aware that HHS has now reposted significantly altered versions of the fact sheet on abortion and breast cancer and the fact sheet on condom use in prevention of HIV and sexually transmitted diseases. The changes made in these fact sheets provide compelling evidence that scientific information is being distorted and suppressed to fit a political agenda. You will receive a separate letter detailing our serious concerns about the altered fact sheets.

Question 3

In Question 3, we asked you to provide: *“The names and scientific qualifications of each expert who was recommended for the position of Chair of the Reproductive Health Drugs Advisory Committee, from whom the recommendation was received, and the reason for the final selection, if any.”*

In your response, you stated that you had received no “written recommendations” for the position. We did not limit our question to “written” recommendations. Therefore, we ask that you provide the requested information, including information about any recommendations that were received, in any form.

Question 4

In question 4, we asked for: *“The names of each HHS advisory committee on which the Administration has replaced, or plans to replace within the next year: (a) members whose terms have not expired, and the names of the members to be replaced; or (b) more than 2 members within a 6-month period. In each case, to the extent known, provide the names and qualifications of the individuals who will replace the removed members, and if they were recommended by any industry groups, or other outside organizations, from whom the recommendation was received.”*

Your response did not state whether there have been any cases in which the Department has replaced two or more members within a 6-month period, as requested in part (b) of our question. Therefore, please provide that information, together with the names and qualifications of the individuals who have replaced or will replace the removed members, and please indicate whether they were recommended by any industry groups, or other outside organizations, and if so, from whom the recommendation was received.

Question 6

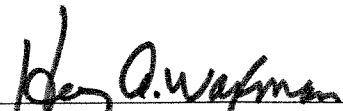
In question 6, we asked for: *“The number of audits HHS or CDC has undertaken or planned of: (a) HIV/AIDS prevention education groups, (b) groups that oppose abstinence-only policies, and (c) abstinence-only programs.”*

Following your receipt of our letter, a member of the Office of the Inspector General (OIG) at HHS telephoned one of our staff to request further information about question 6, and we learned that only the OIG conducts what are referred to as “audits.” Because we were interested in any similar reviews being undertaken by CDC, we telephoned a member of your staff at the Office of the Assistant Secretary for Legislation, and asked that our request be construed to include any reviews conducted by CDC. We were assured that this request would be honored. And, in fact, in response to question 5, you describe audit-like reviews conducted by CDC.

In your response to question 6, however, you described only the audits conducted by the OIG and fail to state whether CDC is conducting any reviews of the groups identified in our question. Therefore, we ask that you provide the number of audits or reviews that HHS or CDC has undertaken or planned of: (a) HIV/AIDS prevention education groups, (b) groups that oppose abstinence-only policies, and (c) abstinence-only programs. We also ask that you provide the grounds for selecting groups for such audits or reviews.

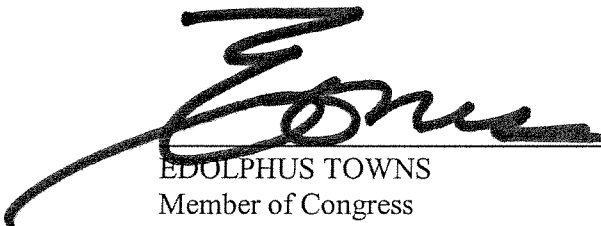
Thank you for your co-operation with these requests. Please provide your responses to these questions by December 24, 2002. If you have any questions, you may call Sarah Despres on the staff of Rep. Waxman, at 225-5420.


Signed:


HENRY A. WAXMAN
Member of Congress


SHERROD BROWN
Member of Congress

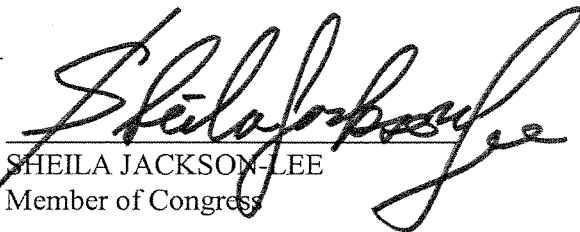

ROSA L. DELAURO
Member of Congress



EDOLPHUS TOWNS
Member of Congress

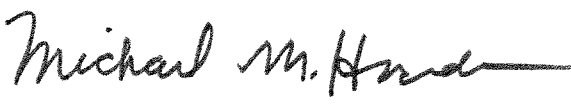

LLOYD DOGGETT
Member of Congress


DIANA DEGETTE
Member of Congress


NITA M. LOWEY
Member of Congress

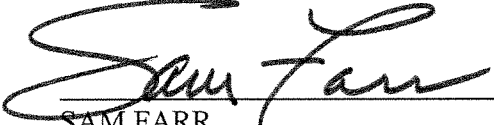

SHEILA JACKSON-LEE
Member of Congress



JERROLD NADLER
Member of Congress


MICHAEL M. HONDA
Member of Congress

The Honorable Tommy G. Thompson
December 18, 2002
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LUCILLE ROYBAL-ALLARD
Member of Congress


SAM FARR
Member of Congress


TAMMY BALDWIN
Member of Congress