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August 14, 2003

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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).

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).

The Honorable Tommy G. Thompson
August 14, 2003
Page 3

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.

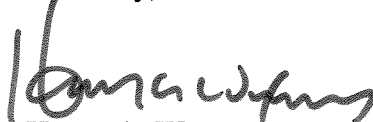
I have previously asked for a full accounting of HHS's audits of comprehensive prevention programs and of abstinence-only programs. HHS provided a partial response to my request, covering only the activities of the OIG, and then refused to provide any information in response to my followup request. Accordingly,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