

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

August 13, 2012

The Honorable Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Ave., S.W.  
Washington, D.C. 20101

Dear Secretary Sebelius:

We write to express strong concerns regarding the Centers for Disease Control and Prevention (CDC) Communities Putting Prevention to Work Program (CPPW). CPPW grants, funded through both the American Recovery and Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (PPACA), have been touted by the Obama Administration as initiatives designed to improve health outcomes through preventive measures.

However, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) recently sent an "Early Alert" letter<sup>1</sup> to CDC Director Thomas Frieden regarding potential "inappropriate lobbying activities using CPPW funds." The OIG's notice stated that CDC-provided information "appear to authorize, or even encourage, grantees to use grant funds for impermissible lobbying. Furthermore, grantee activity reports posted online make troubling assertions that, on their face, raise the possibility that...anti-lobbying provisions were violated."

As the OIG noted, Federal law (18 U.S.C. § 1913) prohibits the use of Federal funds for lobbying.

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to **influence in any manner a Member of Congress, a jurisdiction, or an official of any government**, to favor, adopt, or oppose, by vote or otherwise, any

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<sup>1</sup> Letter to CDC Director Thomas Frieden from HHS Inspector General Daniel Levinson re CPPW (June 29, 2012).

legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation”

The OIG review also indicated that such activities may have “originated from a lack of clear guidance – or even conflicting information – from the CDC to CPPW grantees concerning anti-lobbying restrictions.” In response, the OIG advised CDC to take immediate measures to address the issues outlined above, including increased training for CDC officials and issuance of detailed and non-conflicting guidance to grantees to avoid violation of anti-lobbying measures. Given the fact that Members of this Committee have repeatedly and directly raised these concerns to both you and CDC Director Thomas Frieden, the OIG findings raise further concerns and seem to indicate a lack of oversight or internal controls in your Department.

In questions for the record submitted in conjunction with an April 2010 Energy and Commerce Health Subcommittee hearing<sup>2</sup>, Mr. Whitfield raised concerns regarding CPPW spending on lobbying activities that appeared to violate both Federal law and Office of Management and Budget (OMB) policy protocols. These questions were submitted in response to numerous examples of CPPW grantees reporting information to the CDC regarding lobbying activities for specific laws and policy goals, such as higher tobacco and sugar taxes, as well as zoning restrictions to halt restaurant construction.<sup>3</sup>

In response, CDC official Dr. Terry Pechacek responded that grantees were educated regarding Federal lobbying restrictions applying to CPPW awards. Yet Dr. Pechacek also categorically denied that “education campaigns” that support specific policy goals like soda taxes and zoning restrictions are prohibited under Federal anti-lobbying restrictions. This apparent contradiction is representative of the confusing and conflicting information provided by the CDC to grantees. Dr. Pechacek’s response is also indicative of an improper distinction made by the CDC between lobbying and “education campaigns.” This loose interpretation violates both the plain letter and spirit of the restrictions prohibiting taxpayer-funded grants being spent on lobbying activities.

Mr. Whitfield raised similar concerns directly to you two months later.<sup>4</sup> In response, CDC Director Frieden ensured the Committee that CDC had a “robust plan” to “ensure CDC staff is positioned to identify early warning signs that a program is falling off track or using federal funds for unauthorized and inappropriate activities.”<sup>5</sup> Similarly, in response to questions for the record related to a March 2011 hearing,<sup>6</sup> you directly assured the Committee that “CDC takes seriously its role in ensuring that grantees comply with lobbying restrictions, and we will continue to closely monitor grantees.”

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<sup>2</sup> Hearing re Smokeless Tobacco before the Energy and Commerce Health Subcommittee (April 12, 2010).

<sup>3</sup> As noted in the OIG’s letter, CDC guidance recommended consideration of strategies such as zoning restrictions, banning displays and vending, eliminating trans fats and reducing sodium through purchasing actions, labeling initiatives, restaurant standards, banning free samples and price discounts, and changing relative prices of health and unhealthy items.

<sup>4</sup> Letter to HHS Secretary Kathleen Sebelius from Congressman Ed Whitfield re CPPW (June 9, 2010).

<sup>5</sup> Letter to Congressman Ed Whitfield from CDC Director Thomas Frieden re CPPW (Dec. 9, 2010).

<sup>6</sup> Hearing re FY 2012 Budget and PPACA before the Energy and Commerce Health Subcommittee (March 9, 2011).

Nearly one year later, problems with the CPPW program were again brought to your attention at a March 2012 hearing.<sup>7</sup> In response to questions from Mr. Guthrie regarding unlawful spending of CPPW funds, you declared that the aforementioned prohibition (18 U.S.C. § 1913) on Federal funds for lobbying “applied to the [HHS] but not our grantees.” Given that the language clearly prohibits any “part of the money appropriated by any enactment of Congress” from being “used directly or indirectly to pay...to **influence in any manner a Member of Congress, a jurisdiction, or an official of any government.**” we find this interpretation alarming. The prohibition found at 18 U.S.C. § 1913 applies to the dollars appropriated, regardless of where they are spent, and does not provide any exemption for grantees.

During the March 2012 hearing, Members on the Committee asked for a written response to confirm your interpretation that grantees could spend CPPW grants on lobbying activities. In a follow-up letter dated March 5, 2012,<sup>8</sup> Mr. Whitfield and Mr. Guthrie again asked whether you interpreted the prohibition as applying to Federal grantees. In addition, copies of grant files were requested in response to further reports that CPPW grants were being used for lobbying purposes, in direct violation of Federal law,<sup>9</sup> HHS Assistant Secretary Jim Esquea responded to that letter but did not acknowledge questions regarding this flawed HHS interpretation of the law or offer to produce documents as requested.<sup>10</sup>

In addition to the serious legal and compliance issues ultimately raised about the CPPW program, we have serious concerns about the integrity and effectiveness of spending in the program. The Committee supports the need for preventive initiatives designed to improve health outcomes and reduce chronic disease. However, the apparent lack of attention by HHS officials to grant management may have had the effect of diverting billions in Federal funds from initiatives that actually improve public health. As some of these programs have been in operation for two years, evaluations should be available to determine their effectiveness.

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining the OIG’s recent criticism of CDC, the seemingly illegal use and waste of taxpayer dollars through the CPPW program, and conflicting statements and answers provided to Congress by CDC officials, HHS officials and yourself during testimony before the Committee. To address these matters, we respectfully request the following by August 20, 2012:

1. **A clear answer regarding your interpretation of 18 U.S.C. § 1913:** Despite the plain language of 18 U.S.C. § 1913, do you believe, as indicated by your testimony before the Health Subcommittee on March 3, 2012, that Federal grant recipients are permitted to spend Federal grant dollars on lobbying activities under 18 U.S.C. § 1913?
2. **All CDC grantee files for the CPPW grants**, including but not limited to: grant applications, reviews of the applications; announcements; solicitations; award notices; financial and progress

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<sup>7</sup> Hearing re FY 2013 Budget and PPACA before the Energy and Commerce Health Subcommittee (March 1, 2012).

<sup>8</sup> Letter to HHS Secretary Kathleen Sebelius from Congressmen Ed Whitfield and Brett Guthrie (March 5, 2012).

<sup>9</sup> A detailed list of apparent violations of 18 U.S.C. § 1913 related to CPPW was made part of the record during the March 3, 2012 hearing. A copy of the list has been attached to this letter for your convenience.

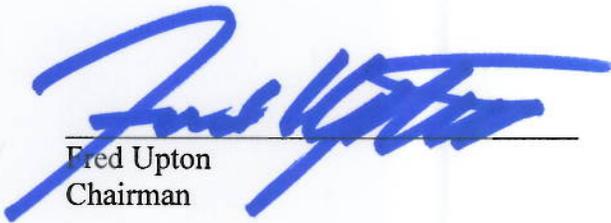
<sup>10</sup> Letter to Congressmen Ed Whitfield and Brett Guthrie from HHS Assistant Secretary for Legislation Jim Esquea (March 23, 2012).

reports (annual and quarterly); staff reviews of financial and progress reports; records of communications with grant recipients, including correspondence and telephone calls related to amendments or administration of the grants; monitoring reports including site visit reports, technical progress and performance reports, formal actions, audit resolutions, and conflict resolutions; evaluation reports of review committee or peer review panels; lists of the special conditions placed on the requested grants; and the program/outcome evaluations.

3. **All CDC grantee files for the Community Transformation Grants (CTG)**, including but not limited to: grant applications; reviews of the applications; announcements; solicitations; award notices; financial and progress reports (annual and quarterly); staff reviews of financial and progress reports; records of communications with grant recipient, including correspondence and telephone calls related to amendments or administration of the grants; monitoring reports including site visit reports, technical progress and performance reports, formal actions, audit resolutions, and conflict resolutions; evaluation reports of review committee or peer review panels, and lists of the special conditions placed on the requested grants; and the program/outcome evaluations. We note that CTG grants appear to fund a similar scope of activities paid for by the CPPW program.
4. **All communications and/or guidance** given to HHS and CDC employees regarding the lobbying restrictions by either the Office of the Secretary, the Office of General Counsel, or the Office of the Director of the CDC. This includes but is not limited to guidance related to "MAPPS Interventions for Communities Putting Prevention to Work."
5. **All communications and/or guidance** given to CPPW and CTG grantees regarding the lobbying restrictions by either the Office of the Secretary, the Office of General Counsel, the Office of the Director of the CDC, and CDC grant managers. This includes but is not limited to guidance related to "MAPPS Interventions for Communities Putting Prevention to Work."
6. **A detailed plan of corrective measures that CDC will undertake in response to the OIG June 29, 2012, Early Alert Letter.**

An attachment to this letter provides additional information about how to respond to the Committee's request. Should you have any questions regarding this request, please contact Carl Anderson with the Committee staff at (202) 225-2927. Thank you for your attention to this matter.

Sincerely,



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Fred Upton  
Chairman

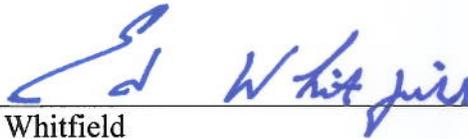


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Cliff Stearns  
Chairman  
Subcommittee on Oversight and Investigations



Joseph R. Pitts  
Chairman  
Subcommittee on Health



Ed Whitfield  
Chairman  
Subcommittee on Energy and Power



Brett Guthrie  
Member of Congress

Attachment

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member  
Subcommittee on Health

The Honorable Bobby L. Rush, Ranking Member  
Subcommittee on Energy and Power