DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

JAN 28 2008

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515-6115

Dear Mr. Chairman:

Thank you for the letter of April 12, 2007, co-signed by Ranking Member Joe L. Barton, Committee on Energy and Commerce, Chairman Bart Stupak, Subcommittee on Oversight and Investigations, and former Ranking Member Ed Whitfield, Subcommittee on Oversight and Investigations. Your letter requests data on compensation practices at the Food and Drug Administration (FDA or the Agency). We provided partial responses to your letter on June 11, June 21, and August 3, 2007. The following is the final response to your request, and represents all the information we were able to locate.

1. **A list of all current FDA employees and their positions enjoying higher total compensation (includes salary, bonuses, cash awards or other cash enhancements) than the highest Senior Executive Service (SES) salary grade or the salary of an Admiral in the Public Health Service (currently $168, 120 per annum) if in a senior management position, or the highest General Schedule (GS) salary grade (currently $154, 600) if paid under the GS scales. For each individual for each year from calendar year 2002 forward, please provide the annual compensation and the mechanism of compensation (Title 42, Commissioned Corps, SES, physician comparability allowance, etc.). For all such employees compensated under Title 42, please also list the date of their appointment.**

Upon review of the data previously submitted to the Energy and Commerce Committee in June 2007, it was determined that employees in the GP and GR pay plans (medical officers and dentists receiving Title 38 pay) were missing from the supplied data. At some point in time during the period of 2002 through 2006, these pay plans represent medical officers receiving PCA – Physician Comparability Allowance, PSP – Physician Special Pay, or PDP – Physician or Dental Pay, also now referred to as Market Pay. Upon further review, we also noted that the amounts reported for the supplemental medical payments seemed very low. We requested that the Program Support Center/Office of the Assistant Secretary for Administration and Management re-run the data, with the intention of resolving these two omissions. The first of these omissions occurred when the Department processed pay plan changes on this group of employees in October 2006 that were retroactive to 2005. The

second omission was due to a filtering error when the Department pulled the data for employees receiving PCA.

The charts enclosed at Tab A update and replace those previously provided to the Committee. Any conclusions that were drawn from the prior submission may have been inaccurate. The previous data reflected only 35% of the compensation across FDA (for the parameters the Committee set) and was missing both employees and some pay data. For example, in the previous submission, for the total period 2002-2006:

- PCA was reported at $314,301; however the latest data reflects that for 2002-2006 it was actually $14.8 million.
- PSP was reported at $4.9 million; however the latest data reflects for that same period it was actually $56.8 million
- Market Pay (PDP) was reported at $102,746 in 2006; however for that same period it was actually $5.16 million

Please note, that for the purposes of comparing full cycle data, only the data from calendar years 2002, 2003, 2004, 2005 & 2006 was used for analysis.

Some analysis of the updated data include:

- From 2002 through 2006, retention incentives have been less than 1 percent of FDA's budget. Based on the inquiry criteria in 2006, approximately $8.5M was spent on retention incentives, which is 0.45%of the $1.9B total spent by FDA.

- For the period 2002-2006, 84% of all retention incentives went to scientific staff.

- During the same period, 94% of all supplemental monies (cash awards, retention, recruitment, and relocation incentives, and all medical pays) went to scientific staff.

- OPM regulations describe criteria and Agency requirements for the use of categorical retentions. Regulations limit categorical retentions to 10%. Within FDA, only the Center for Drug Evaluation and Research (CDER) uses the categorical option which is based on a business case. This business case presents compelling evidence and data in support of the use of retention incentives to retain Pharmacologists, Pharmacokineticists, Toxicologists, Chemists, Mathematical Statisticians and Medical and Dental Officers

- The decision to offer categorical retentions was based on attrition data that indicated that CDER employees in these occupational series, with over three years of drug review experience were resigning for higher paying government positions, to private industry and specifically to pharmaceutical companies.

- Historically CDER has experienced difficulty recruiting and retaining candidates within these occupational series with specific skills, education, and knowledge. On-the-job experience and training costs invested in these candidates can cost more than $1M over a two-year period, just for Medical Officers alone.

- Salary surveys show that individuals in these categories can receive annual salaries of at least $180,000 to $250,000, in private industry (exclusive of bonuses).

- In 2006, approximately $1.5M or 17% of the $8.5M was spent on scientific retention incentives. These incentives cover other positions within CDER (non-categorical), and all scientific occupational series within the other centers. Employees are performing work associated with ongoing medical device review, animal drug review, blood safety, and food safety and security, as well as, performing mission critical work associated with program initiatives addressing HIV/AIDS, Hurricane Katrina efforts, Mad Cow/BSE, Pandemic Flu, West Nile Virus, Homeland Security Presidential Directives for Food Security, critical path, and bioinformatics.

- In 2006, approximately $682,805 or 8% of the $8.5M was spent on administrative retention incentives. These incentives were approved for non-SES employees within various administrative positions, such as, General Attorneys, Regulatory and Policy Analysts, Program Managers, IT Specialists, Public Affairs Specialists and Financial Advisors. These employees are performing mission critical work associated with legal, regulatory and policy issues dealing with user fees negotiations, food safety and security, bioterrorism, risk assessment, crisis management, the critical path initiative, the implementation of the Unified Financial Management System (UFMS), and the White Oak Consolidation effort.

- In 2006, approximately $575,471 or 7% of the $8.5M was spent for SES retention incentives in various occupational series. These individuals are the Agency's experts and provide direction and leadership to thousands of FDA scientists, inspectors, and public safety and law enforcement professionals. Their breadth of FDA and regulatory knowledge is unique, extensive, and critical to the Agency's public health mission of assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, and assuring the safety of the nation's food supply.

- In 2006, of the 28 SES employees receiving retention, 35% have received a Presidential Rank Award or other high-level Federal award.

- The awards category (column) includes performance and special act awards for non-SES employees as well as performance awards (bonuses) and Presidential Rank awards for SES employees. SES bonuses, by regulation, cannot be lower than 5% of a SES employee's salary. Because SES employees tend to be the highest level of employees and receive the highest salaries, more dollars are spent on these awards. In addition, the President awards the Rank Awards and these represent either 20% or 35% of the SES employee's salary, depending on whether the award is Meritorious or Distinguished.

2. A list of all FDA employees, regardless of total compensation, and their positions who have received retention, locality, performance bonuses or awards, or other extraordinary payments in excess of $5,000 in any given year and the amounts of such bonuses, awards, or other extraordinary payments since January 1, 2002. Please also provide the records justifying the bonuses, awards, or other extraordinary payments.

Enclosed at Tab B are additional payment justification records, separated by the Office of the Commissioner (OC), Center for Drug Evaluation and Research (CDER), Center for Biologics Evaluation and Research (CBER), Center for Food Safety and Applied Nutrition (CFSAN), Center for Veterinary Medicine (CVM), Center for Devices and Radiological Health (CDRH), National Center for Toxicological Research (NCTR), and the Office of Regulatory Affairs (ORA).

Thank you again for your interest in FDA matters. A similar response has been sent to the co-signers of your letter, without enclosures.

Sincerely,

Stephen R. Mason
Acting Assistant Commissioner
for Legislation

Enclosures