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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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April 23, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
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The Honorable Andrew C. von Eschenbach, M.D.
Commissioner
Food and Drug Administration
Department of Health and Human Services
5600 Fishers Lane
Rockville, MD 20857

Dear Dr. von Eschenbach:

Under Rules X and XI of the Rules of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating the administrative integrity of the Food and Drug Administration (FDA). As part of that inquiry, the Committee sent a letter to FDA on April 12, 2007, requesting certain records regarding bonuses paid to employees that exceed \$5,000 per year from 2002 forward. The Committee acknowledges the responsive documents provided with your June 11, 21, and 27, 2007, and January 28, 2008, transmittals.

The failure of the agency, however, to respond to the Committee's request in a timely manner has hampered our inquiry. We now request updated data regarding the excessive bonuses paid to senior executives at FDA. It is important that this updated information be provided to the Committee in advance of your testimony tentatively scheduled for April 22, 2008.

Please provide the Committee with updated information, as originally requested of FDA in the Committee's April 12, 2007, letter. In particular, we are interested in FDA's use of Title 42 consultant compensation and other mechanisms to boost compensation above base salary including retention bonuses, locality bonuses, performance, or any other salary enhancement or awards. Please provide the following information within two weeks of receipt of this letter:

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

The Honorable Andrew C. von Eschenbach, M.D.


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Admiral in the Public Health Service (currently \$172,188 per annum) if in a senior management position, or the highest General Service (GS) salary grade (currently \$158,500) if paid under the GS scales. For each individual for each year from April 12, 2007, (the date of the Committee's original document request) forward, please provide the annual compensation and the mechanism of compensation (Title 42, Commissioned Corps, SES, physician comparability allowance, etc.). For all employees compensated under Title 42, please also list the date of their appointment; and

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 \$4,000 and the amounts of such bonuses, awards, or other extraordinary payments since April 12, 2007.

Please also provide the records relating to the justifications of the bonuses, awards, or other extraordinary payments. For the purpose of responding to this request for information and documents, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. If you have any questions, please contact David Nelson of the Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable John Shimkus, Ranking Member
Subcommittee on Oversight and Investigations

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.