

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

February 18, 2011

Ms. Nancy-Ann DeParle
Deputy Chief of Staff
The White House
Washington, DC 20500

Dear Ms. DeParle:

Congratulations on your appointment as Deputy Chief of Staff to President Obama. We look forward to working with you in your new capacity.

We are writing to you as a result of your work as Director of the White House Office for Health Reform (WHOHR).¹ In the April 8, 2009, Executive Order establishing that office, President Obama wrote that it would be the leader for the federal government's comprehensive effort to pass health care legislation.² A little over one year after your appointment, the President signed into law the Patient Protection and Affordable Care Act (PPACA).³ After passage, the WHOHR was integral to the Administration's ongoing efforts to convince the public of the law's benefits.⁴

The President promised many times during the 2008 presidential campaign that the meetings and debates on health care legislation would be broadcast to the public,⁵ and once in office he promised to run the most open and transparent administration in history.⁶ As Members

¹ Mary Lu Carnevale, *Obama Announces Sebelius and DeParle for Health Posts*, WALL STREET JOURNAL, Mar. 2, 2009.

² Exec. Order No. 13,507, 74 Fed. Reg. 17071 (April 13, 2009).

³ President Barack Obama, Remarks by the President and Vice President at Signing of the Health Insurance Reform Bill (March 23, 2010).

⁴ Sarah Kliff & Jennifer Haberkorn, *Dems Sell Benefits of Health Reform*, POLITICO, May 5, 2010.

⁵ Chris Frates, *Closed-door Health Care Reform Decried*, POLITICO, Oct. 27, 2010; Transcript of Thursday's Democratic Presidential Debate, <http://www.cnn.com/2008/politics/01/31/dem.debate.transcript/> (last visited Feb. 18, 2011).

⁶ Macon Phillips, *Change has come to Whitehouse.gov*, THE WHITE HOUSE BLOG, Jan. 20, 2009, http://www.whitehouse.gov/blog/change_has_come_to_whitehouse-gov/ ("President Obama has committed to making his administration the most open and transparent in history..."); Sheryl Gay Stolberg, *Obama Finds That Washington's Habits of Secrecy Die Hard*, N.Y. TIMES, April 5, 2009.

of Congress who were prevented from participating in a free and open debate on the enactment of PPACA, however, we believe that these promises were not upheld in any meaningful way.⁷

Prior to the passage of PPACA, in fact, a number of press accounts detailed the many non-public meetings that apparently took place between representatives of the Administration and outside interest groups.⁸ We are troubled by the secret negotiations which apparently took place between the WHOHR and outside interest groups, especially given the specific promises of transparency regarding health care reform.

We write to you today in the hope that the Administration will belatedly uphold the President's promise of transparency.

We request that you provide information regarding the WHOHR and that office's activities relating to health care reform. The relevant time period for all of the following requests is March 2, 2009, to the present. Please provide the following documents and information within two weeks of the date of this letter:

1. A list of each employee, detailee, or any other representative⁹ of the WHOHR. Include job title, duties, and salary.
2. A list of every meeting, briefing, or telephone call (including conference calls or video conferences) regarding reforms or changes to the health care system,¹⁰ between any employee, detailee, or any other representative of the WHOHR and any non-governmental individual or group. Please provide the following information about any such meetings, briefings, or telephone calls: the date, the duration, the names of the individuals present and their organization, office, or employer, and the subject matters discussed.
3. All notes, minutes, transcripts, documents, summaries or any other written or recorded materials prepared for, generated or utilized during, or resulting from, each meeting, briefing, or telephone call described in response to request number 2.

⁷ Clemente, Lisi, *Obama Promised 8 Times During Campaign to Televisе Health Care Debate*, N.Y. POST, Jan. 6, 2010.

⁸ Ceci Connolly and Michael D. Shear, *Discord on Health Care Dulls Luster of New Pacts*, WASHINGTON POST, July 9, 2009; Carrie Budoff Brown & Chris Frates, *President of the American Hospital Association Says the White House Misstated Deal*, POLITICO, May 15, 2010; David D. Kirkpatrick, *White House Affirms Deal on Drug Cost*, N.Y. TIMES, Aug. 5, 2009.

⁹ We recognize that the effort to pass health care legislation was an effort undertaken not only by the WHOHR, and that many individuals assisting the WHOHR may have not been considered "employees" in the purest sense of the word. For the purposes of this request we intend the phrase "employee, detailee, or any other representative" to include not only individuals specifically assigned to the WHOHR, like yourself, but any other personnel engaged in the President's effort to pass health care legislation at your discretion.

¹⁰ We understand that many different bills, ideas, and proposals were considered with regard to health care. For the purposes of this request we are not limiting our request to only those ideas or proposals that eventually became part of PPACA, but all ideas, reforms, and suggested changes and proposed changes, or any other modification to the health care system or industry.

4. All written communications, including e-mail, regarding reforms or changes to the health care system, between any employee, detailee, or any other representative of the WHOHR and any non-governmental individual or group.

Please provide the documents and information to the Committee by Friday, March 4, 2011. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Committee staff for Oversight and Investigations at (202) 225-2927.

Sincerely,


Fred Upton
Chairman
Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
Joseph R. Pitts
Chairman
Subcommittee on Health
Michael C. Burgess
Vice Chairman
Subcommittee on Health

Attachment

cc: Mr. Robert Bauer, White House Counsel

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

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States [name of department or agency of addressee] (the "[Entity]") and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the [Entity]; and includes any other person(s) defined in the document request letter.

For private recipients:

"You" or "your" means and refers to you as a natural person and the [non-governmental entity] ("[Entity]") and any of its subsidiaries, affiliates, divisions, departments, officers, directors, employees, attorneys, agents, advisors, consultants, or any other persons acting on behalf or under the control or direction of [Entity].]