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Grassley Urges NIH Director to Ensure Employees May Speak to Congress

WASHINGTON – Sen. Chuck Grassley has urged the director of the National Institutes of Health to ensure that agency officials do not intimidate federal employees against speaking to Congress. Grassley is concerned that in recent days, several employees at the National Institute of Environmental Health Sciences, which is part of the National Institutes of Health, were given a form to fill out if they were contacted by congressional investigators.

“Federal employees should feel free to speak with Congress and tell us about problems where they work,” Grassley said. “Whistleblowers have exposed huge amounts of wasted tax dollars and abuse of the public trust. Any attempt to silence potential whistleblowers is not only wrong, but also illegal.”

As ranking member of the Finance Committee, Grassley has been conducting an inquiry into allegations of mismanagement and possible ethics violations at the National Institute of Environmental Health Sciences. Upon learning that agency employees were given a form to fill out if they were contacted by congressional investigators, he wrote to the director of the National Institutes of Health and asked for an explanation.

The text of Grassley’s letter follows here.

August 20, 2007

Via Electronic Transmission

Elias A. Zerhouni, M.D.
Director
National Institutes of Health
9000 Rockville Pike
Bethesda, Maryland 20892

Dear Director Zerhouni:

As a senior member of the United States Senate and the Ranking Member of the Committee on Finance (Committee), I have a duty under the Constitution to conduct oversight into the actions of executive branch agencies, including the activities of the National Institutes of Health (NIH/Agency). In this capacity, I must ensure that NIH properly fulfills its mission to advance the public's welfare and makes responsible use of the public funding provided for medical studies. This research often forms the basis for action taken by the Medicaid and Medicare programs.

On July 11, 2007, I sent you a letter alerting you about concerns of possible retaliation against federal employees at the National Institute of Environmental Health Sciences (NIEHS). Specifically, I informed you that several people, both inside and outside of NIEHS, told my staff that NIEHS employees had discussions with management that left them with the impression that there would be retaliation if it was discovered that they had provided information to, among others, congressional investigators. In one conversation, an NIEHS employee said that it had been implied that leaking information would have an impact on employee bonuses.

In response, I asked you to let NIH employees know that they are within their rights to speak with Congress confidentially. You complied with my request by sending a letter on July 16 to Dr. David Schwartz, director of the NIEHS. I am grateful that you complied so promptly with my request.

In that letter you wrote, "I have not received documentation to verify that threats of retaliation have actually taken place. Nonetheless, let me remind you that NIH is committed to the letter and spirit of the federal whistleblower protection statutes."

During the course of my investigation of problems at NIH, I received a copy of a form that has been passed around recently to employees at NIEHS. This form asks employees to report if they have been contacted by Congress. However, this form looks more like something people in NIH congressional affairs would use to log requests for information from Congress. It doesn't appear to be something that would be handed out to regular NIEHS employees or employees at any of the other NIH institutes. In fact, handing this form out to rank and file NIEHS employees during the course of a congressional investigation could cause these employees to feel that management is attempting to flush out whistleblowers or any other individual assisting me with my inquiry.

Dr. Zerhouni, I co-authored the Whistleblower Protection Act of 1989 and helped to include whistleblower protections in Sarbanes-Oxley legislation. I did this because whistleblowers are some of the most patriotic people I know — men and women who labor, often anonymously, to let me know when the system is broken. So I'm a little confused about how passing out this form, during this congressional investigation, fits within your stated belief that the NIH is "committed to the letter and spirit of the federal whistleblower protection statutes."

Let me also say that there are many forms of retaliation and intimidation and during my years in Congress I have encountered quite a few forms of this behavior. As I am sure you know, requiring NIEHS employees to fill out the attached form places each employee who may be assisting the Committee in a precarious position. For example, an NIEHS employee working with the Committee could decide not to complete the form and not report their contact with the Committee, which could lead to them being charged with insubordination. On the other hand, an NIEHS employee working with the Committee could decide to fill out the form and report their contact with my Committee,

and that would surely make them a target for retaliation if they had not earlier reported such contact.

Once again Dr. Zerhouni, I would like to remind you that attempts to interfere with a Congressional inquiry is against the law. I have attached a copy of 18 U.S.C. § 1505 to this letter for your reference. That law states in pertinent part that:

Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress--

Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Additionally, denying or interfering with employees' rights to furnish information to Congress is also against the law. I have attached another copy of 5 U.S.C. § 7211 to this letter for your reference. That law states:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.

Finally, federal officials who deny or interfere with employees' rights to furnish information to Congress are not entitled to have their salaries paid by taxpayers' dollars. I have attached a copy of P.L. 109-115 § 818 to this letter for your reference. As enacted by continuing resolution (H.J. Res 20, P.L.110-5) P.L. 109-115 § 818 continues in effect. P.L. 109-115 § 818 states:

No part of any appropriation contained in this or any other Act shall be available for the payment of the salary of any officer or employee of the Federal Government, who --

(1) prohibits or prevents, or attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress in connection with any matter pertaining to the employment of such other officer or employee or pertaining to the department or agency of such other officer or employee in any way, irrespective of whether such communication or contact is at the initiative of such other officer or employee or in response to the request or inquiry of such Member, committee, or subcommittee; or

(2) removes, suspends from duty without pay, demotes, reduces in rank, seniority, status, pay, or performance of efficiency rating, denies promotion to, relocates, reassigns, transfers, disciplines, or discriminates in regard to any employment right, entitlement, or benefit, or any term or condition of employment of, any other officer or employee of the Federal Government, or attempts or threatens to commit any of the foregoing actions with respect to such other officer or employee, by reason of any communication or contact of such other officer or employee with any Member, committee, or subcommittee of the Congress as described in paragraph (1).

NIH employees have the right to talk to Congress. Hopefully, the intent of this form was not to discourage or intimidate NIEHS employees from talking to Congress; but I must admit, the timing is curious. To help me better understand why this form was handed out, I would like you to personally answer the following questions. Please respond to each question by first repeating the question, followed by the appropriate response.

Please explain why this form was passed out to NIEHS employees during multiple, ongoing congressional investigations.

1. Did you personally approve the distribution of this form to NIEHS employees? If not, please identify who did.
2. Since June 2003, has this form been handed out to employees at other NIH institutes? If so, please provide dates and the corresponding institute, as well as the reason for handing out the form to NIH employees other than those in congressional affairs.
3. Please list each employee at NIEHS who received a copy of this form.
4. Dr. Zerhouni, why do you think that employees at the NIEHS feel more comfortable contacting my investigators instead of people in your office when there are problems at NIEHS?
5. Can you please describe the rationale for having this type of form at all?

I request your prompt attention to this matter and your continued cooperation. I also request that the response to this letter contain your personal signature. Also, I am sending you a copy of the form that prompted this letter.

Sincerely,

Charles E. Grassley
Ranking Member