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For Immediate Release  
Thursday, July 12, 2007

Grassley works to protect federal whistleblowers

WASHINGTON — Sen. Chuck Grassley is working to protect federal employees who speak out about wrongdoing by highlighting the legal protections given to whistleblowers in a letter sent today to the Director of the National Institutes of Health.

“No federal employee should fear retaliation for voicing concerns about mismanagement or misuse of tax payer dollars,” Grassley said. “Sunshine is the best disinfectant. I hope NIH officials will make agency employees feel comfortable about speaking with congressional staff.”

Grassley is investigating allegations of mismanagement at the National Institute of Environmental Health Sciences, one of the 27 institutes and centers of the National Institutes of Health. He has ongoing reviews of several agencies whose medical research and use of public funds help to advance public welfare.

Grassley also today said that federal employees who wish to contact his staff can send faxes to 202/228-2131 or call 202/224-6447.

Grassley is Ranking Member of the Senate Committee on Finance. The text of his letter to Elias Zerhouni, Director of the National Institutes of Health, is below. The attachment to the letter is posted at <http://finance.senate.gov> in the section containing Grassley press releases.

July 11, 2007

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, as the primary federal agency responsible for conducting and supporting medical research, properly fulfills its mission to advance the public's welfare and makes responsible use of the public funding provided to accomplish this task. Often, the work of the NIH forms the basis for action taken by the Medicaid and Medicare programs.

Careful Congressional oversight of the NIH is especially important to ensure that NIH upholds its responsibility to provide vital medical research. Senior officials in any government agency are expected to cooperate with legitimate Congressional oversight activities, not to impede Congressional inquiries, conceal information from Congress, or make thinly veiled threats to employees who might speak out. Interfering with Congressional oversight hurts not only the agency, but also the American public. It is also important that senior officials assure their employees that it is both acceptable and within their rights to speak to Congress, should they feel compelled to do so.

I was extremely troubled after reading the last line of The Washington Post article dated June 27, 2007 identifying numerous allegations of mismanagement at the National Institute of Environmental Health Sciences (NIEHS/Institute). Commenting on problems at the Institute due to the leadership of David Schwartz, Director of the NIEHS, an anonymous source told The Washington Post, "Morale is just horrible." The Post reported that this individual spoke "on the condition of anonymity for fear of retribution."

Several people, both inside and outside of NIEHS, alerted my staff to the fact that NIEHS employees have recently 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. Such discussions can and often do have a chilling effect on NIEHS employees' sharing with Congress needed information. For example, one employee said that it was implied that leaks of information could affect employee bonuses.

Often employees and other internal sources have crucial information to share and courageous whistleblowers, including NIH employees, have played important roles in Congressional inquiries in the past. To me, any attempts by senior leadership at NIEHS to stifle a Congressional investigation by me or any other Senator or Congressman demonstrates poor judgment, intolerance for dissenting opinions, and an aversion to transparency.

I continually rely on whistleblowers and others to alert me to fraud and mismanagement. In fact, I co-authored the Whistleblower Protection Act of 1989 and helped to include whistleblower protections in Sarbanes-Oxley legislation to safeguard those who expose corporate fraud, waste, and abuse. Also, I have the highest respect for whistleblowers because they are among the most patriotic people I know—men and women who come to me when they are disillusioned with the system.

With this in mind, I would like to ensure that the NIH is aware of the fact that interfering 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 a 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, like employees at any other government agency, have the right to talk to Congress. If NIH employees have concerns to share, it is not anyone's place to forbid them from doing so. Any actions to discourage employees at the NIEHS from talking to congressional investigators make me wonder what the NIEHS is trying to hide. Sunshine is the best disinfectant. If there are problems at NIEHS, I am certain that concealing them is not the solution. It does a disservice to federal employees, and ultimately to the public who entrust their well-being to this critical institute.

If discouraging NIEHS employees from talking to Congress was not the intent, then I suggest that NIEHS leadership correct any misconceptions they may have caused and that they correct those perceptions now. After all, it is well known that what people perceive is often their reality.

I propose that you tell NIEHS employees that you are aware of these allegations and that any attempt to threaten federal employees, either directly or indirectly, for speaking to congressional investigators will not be tolerated. This can best be accomplished by notifying NIEHS employees that they are free to talk to Congress and that you intend to protect their right to come forward and share information. To help you in this endeavor, we are sending you the fax number for the Committee (202-228-2131), in case your employees would feel more comfortable sending us information in confidence. However, if you feel it is appropriate to prohibit NIEHS employees from bringing their concerns to Congress then please articulate that position in writing.

I thank you for your prompt attention to this matter and your continued cooperation.

Sincerely,

Charles E. Grassley  
United States Senator  
Ranking Member of the Committee on Finance

Enclosures:

Statutory text 18 U.S.C. § 1505

Statutory text 5 U.S.C. § 7211

Statutory text P.L. 109-115 § 818