

ONE HUNDRED FIFTEENTH 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
July 26, 2017

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, DC 20548

Dear Mr. Dodaro:

I write to request GAO open an investigation into the U.S. Department of Energy's (DOE) potential misuse of appropriated funds and issue a formal determination regarding possible legal violations. On July 25, 2017, *Energy and Environment News* reported that the DOE "used its official Twitter account to promote an editorial by Energy Secretary Rick Perry criticizing Obamacare before deleting it ..." ¹ I have significant concerns as to why DOE is using official agency resources to weigh in on the health care debate, and am troubled that recent DOE actions may represent a broader effort by the Administration to inappropriately use agency resources on matters well beyond an agency's jurisdiction. I request that GAO's investigation address whether this action is part of a larger effort within the Department of Energy whereby the Secretary advocates for health care proposals pending before Congress.

Additionally, I also request a formal opinion as to whether recent DOE actions, including the agency's use of its official Twitter account to promote Secretary Perry's editorial criticizing the Affordable Care Act (ACA), violated the Antideficiency Act, ² the Anti-Lobbying Act, ³ or the publicity or propaganda and anti-lobbying provisions of the Consolidated Appropriations Act (CSA) of 2017. ⁴ Pursuant to section 715 of the CSA:

No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution

¹ *Perry enters Obamacare debate using official Twitter account*, E&E News PM (July 25, 2017).

² 31 USC § 1341.

³ 18 USC § 1913.

⁴ Consolidated Appropriations Act of 2017, Pub. L. 115-31.

or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

Secretary Perry's editorial directly calls for replacing the ACA, stating "[i]t has never been enough to repeal Obamacare... [r]eplacing is much harder work. But it must be done ..."⁵ Additionally, Secretary Perry's editorial supports passage of legislation to repeal the ACA:

America can't afford another decade of spiraling costs, political bickering, or inaction. This may be the only window we have to do this. Millions of Americans are depending on their representatives to repeal this crushing law ... [w]e cannot, and must not, fail them any longer.⁶

Additionally, DOE may have violated CSA prohibitions on general publicity or propaganda. Pursuant to CSA section 718:

No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.⁷

GAO has interpreted this language to prohibit "covert propaganda activities," defined as "materials... prepared by an agency and circulated as the ostensible position outside the agency" and that "a critical element of covert propaganda is the concealment of the agency's role in sponsoring material."⁸ The origin of the editorial is potentially misleading as DOE does not implement the ACA but in this instance "used its official Twitter account to promote an editorial" by Secretary Perry criticizing the law.⁹

I have serious concerns that the origin of the materials is unclear or misleading and that taxpayer funds may have illegally gone towards the creation of these materials. To that end, I request GAO open a full investigation into DOE's misuse of appropriated funds and whether a larger effort exists within the Department whereby the Secretary advocates for health care proposals pending before Congress. I also ask GAO to issue a formal determination regarding these potential violations of the Antideficiency Act, the Anti-Lobbying Act, and the CSA.

⁵ Secretary Rick Perry, *Time to discard the burdens and costs of Obamacare: Rick Perry (Opinion)*, Cleveland.com (July 25, 2017).

⁶ *Id.*

⁷ See note 4.

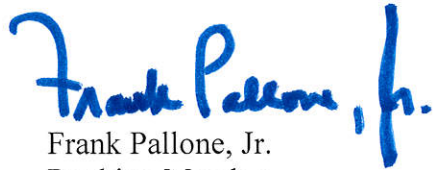
⁸ U.S. Government Accountability Office, *Sec. 1913 Where Members of the Public Are Not Urged to Contact Their Congressional Representatives Regarding this Issue* (Jun. 1988) (GAO B-229257).

⁹ See note 1.

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I appreciate your immediate attention to this matter. Should you have any questions about my request, please contact Jon Monger on the Democratic Staff of the Energy and Commerce Committee at (202) 225-3641.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." The signature is written in a cursive, flowing style.

Frank Pallone, Jr.
Ranking Member