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United States Senate

SPECIAL COMMITTEE ON AGING

WASHINGTON, DC 20510-6400

(202) 224-5364

November 12, 2019

The Honorable Lance Robertson
Administrator and Assistant Secretary for Aging
Administration for Community Living
U.S. Department of Health and Human Services
330 C Street SW
Washington, DC 20201

Dear Administrator Robertson:

Thank you for meeting with me and my staff on June 4, 2019 to discuss the reorganization of the Administration for Community Living (ACL) and for your subsequent response to my June 12, 2019 letter. As follow up, and in my oversight role as Ranking Member of the Senate Special Committee on Aging, I am writing to request a copy of the guidance document that informed ACL's policies concerning the process for reorganization.

I have repeatedly expressed my concern that key aging and disability organizations were not consulted in the reorganization decision-making process. In your July 11, 2019 response letter you state, "ACL's decisions and actions were informed by HHS policies concerning the process for reorganizations" and conclude with "no guidance we received prohibited stakeholder engagement during the planning of a reorganization." It is therefore troubling that you would purposely omit stakeholders from a conversation regarding the reorganization of ACL.

I understand that you have expressed concern with complying with my request for a copy of the aforementioned guidance document because that request comes from the Committee's Ranking Member and not from the Chair. Any such concern is unfounded. The oversight responsibilities provided to the Special Committee on Aging by the Senate are granted to *the Committee*, not the Chair alone, *see, e.g.*, S. Res. 4, §104(B) and (C), 95th Cong. (1977), as amended ("[i]t shall be the duty of the *special committee* to conduct a continuing study of any and all matters pertaining to problems and opportunities of older people" and "the *special committee* is authorized . . . to make investigation into any matter within its jurisdiction" (emphasis added)). It is necessary for the Ranking Member to request and receive information from executive agencies to fulfill the oversight responsibilities that the Senate has assigned to the Committee. Nothing in the Senate's or this Committee's rules support a distinction in answering the requests of a Chairman as opposed to a Ranking Member. To the contrary, both the Senate's and the Committee's rules recognize the independent need of minority committee members to gather information on their own, without the Chairman's approval. *See* Senate Rule XXVI.4(d) (providing that Minority Members of a committee are entitled to call witnesses selected by them to testify at committee

hearings), Rule II of the Special Committee on Aging, 161 Cong. Rec. S1119 (“[T]he Ranking Member shall be entitled to call at least one witness to testify or produce documents with respect to the measure or matter under consideration at the hearing.”).

As my colleague, Senator Charles Grassley, cogently explained in his June 7, 2017 letter to the President, available at [https://www.judiciary.senate.gov/imo/media/doc/2017-06-07%20CEG%20to%20DJT%20\(oversight%20requests\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2017-06-07%20CEG%20to%20DJT%20(oversight%20requests).pdf), the position that only requests from committee chairmen should be considered proper oversight inquiries “fundamentally misunderstand[s]” the committee structure of Congress and the responsibility all Members have in conducting oversight, and “there is no legal or Constitutional basis for the Executive Branch” to withhold information based on such a distinction, unless Congress explicitly directs otherwise. In addition, the U.S. Court of Appeals for the D.C. Circuit has rejected distinguishing between Chairmen and Ranking Members with regard to congressional requests for information from executive agencies. As that court explained, “It would be an inappropriate intrusion into the legislative sphere for the courts to decide without congressional direction that, for example, only the chairman of a committee shall be regarded as the official voice of the Congress for purposes of receiving such information, as distinguished from its ranking minority member, other committee members, or other members of the Congress[.]” as “each is entitled to request such information from the executive agencies as will enable him to carry out the responsibilities of a legislator.” *Murphy v. Dep’t of the Army*, 613 F.2d 1151, 1157 (D.C. Cir. 1979).

Accordingly, I request that you provide a copy of any guidance documents provided to you from subject matter experts at ACL or others in the Administration regarding the reorganization of ACL no later than December 3, 2019.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey". The signature is fluid and cursive, with the first name "Bob" and last name "Casey" clearly legible.

Robert P. Casey, Jr.
United States Senator