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COMMITTEE ON
EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

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JAMAAL BOWMAN, NEW YORK

September 4, 2024

The Honorable Phyllis K. Fong
Inspector General, U.S. Department of Agriculture
1400 Independence Ave. SW
Washington, D.C. 20250

Dear Inspector General Fong:

The U.S. House Committee on Education and the Workforce (Committee) is engaged in ongoing oversight of the U.S. Department of Agriculture's (USDA) and the Minnesota Department of Education's (MDE) administration of federal child nutrition programs (FCNP) and Feeding Our Future (FOF).

On September 30, 2022, then-Ranking Member Foxx and others sent USDA Secretary Thomas J. Vilsack a letter requesting information to enable oversight of improper payments of USDA's FCNP intended to provide nutrition assistance for hungry children.¹ The letter included five requests for documents and information due no later than October 31, 2022. No documents or information were received.

Chairwoman Foxx and the same signatories wrote to Secretary Vilsack on July 20, 2023, to address his lack of response to the September 30, 2022, letter and reiterated the same five requests for documents and information.²

On August 24, 2023, you responded, stating that USDA had referred the letter to the USDA Office of Inspector General (OIG) so that you could provide "OIG-related information and that

¹ Ranking Member Comer, Ranking Member Thompson, Rep. Fischbach, Rep. Finstad, Rep. Emmer, and Rep. Stauber; Letter from Virginia Foxx et al., Ranking Member, Comm. on Educ. and the Workforce, to Thomas J. Vilsack, Sec'y, U.S. Dep't of Agric. (Sept. 30, 2022), <https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3AUS%3Ada680665-a587-3ee5-a7b6-f12a12e16d63&viewer%21megaVerb=group-discover>; Federal Child Nutrition Programs are collectively the Child and Adult Care Food Program and the Summer Food Service Program.

² Letter from Virginia Foxx et al., Chairwoman Comm. on Educ. and the Workforce, to Thomas J. Vilsack, Sec'y, U.S. Dep't of Agric. (July 20, 2023), https://edworkforce.house.gov/uploadedfiles/ltr_to_vilsack_final.pdf.

The Honorable Phyllis K. Fong
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an update would be provided within 60 days of our request.”³ No update was provided to the Committee.

The Committee again reached out to your office on May 20, 2024, and was told that documents would be provided by the end of June. On July 9, 2024, we received 38 pages of documents that purportedly were responsive to request one, and five pages of documents that were purportedly responsive to request three.⁴ Regarding the second, fourth, and fifth requests, you stated that you “had not located any OIG documents that you believe to be related to those requests.”⁵ On July 24, 2024, we received 53 pages of documents that were purportedly responsive to the first request.

The OIG’s production of information has been neither timely nor fully responsive. The documents and information provided to the Committee do not explain your actions or their impact on what has been described as “the largest pandemic fraud in the nation.”⁶ Accordingly, the Committee is invoking compulsory process to compel production of that information.

Rule X of the Rules of the House of Representatives authorizes the Committee to conduct oversight of all matters involving “education... generally” to inform potential legislation.⁷ The fraud in the FCNP is within the Committee’s jurisdiction and is a “subject on which legislation ‘could be had.’”⁸

Attached is a subpoena compelling production of the documents and communications delineated in the attached schedule no later than 12:00 p.m. on September 18, 2024.

Sincerely,



Virginia Foxx
Chairwoman
U.S. House Committee on Education
and the Workforce

Attachments

³ Letter from Phyllis Fong, Inspector Gen., U.S. Dep’t of Agric. Office of Inspector Gen., to Virginia Foxx, Chairwoman, Comm. On Educ. and the Workforce. (Aug. 24, 2023) (on file with the Committee).

⁴ Letter from Phyllis Fong, Inspector Gen., U.S. Dep’t of Agric. Office of Inspector Gen., to Virginia Foxx, Chairwoman, Comm. On Educ. and the Workforce. (July 9, 2024) (on file with the Committee).

⁵ *Id.*

⁶ Off. of Pub. Affs., *U.S. Att’y Announces Fed. Charges Against 47 Defendants in \$250 Million Feeding Our Future Fraud Scheme*, U.S. DEP’T OF JUST.. (Sept. 20, 2022), <https://www.justice.gov/opa/pr/us-attorney-announces-federal-charges-against-47-defendants-250-million-feeding-our-future>.

⁷ Rules of the U.S. House of Representatives, 118th Cong. at 6, 7, 9-12 (Jan. 10, 2023).

⁸ *Trump v. Mazars USA, LLP*, 140 S.Ct. 2019, 2031 (2020) (internal citations omitted).

SUBPOENA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA

To Phyllis K. Fong, Inspector General, United States Department of Agriculture

You are hereby commanded to be and appear before the
Committee on Education and the Workforce



of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2176 Rayburn House Office Building, Washington, D.C. 20515

Date: September 18, 2024

Time: 12:00 p.m. EDT

- to testify at a deposition** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing** touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To the U.S. Marshal Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 3rd day of September, 2024.

Virginia Foxx

Chairman or Authorized Member

Attest:

Kerri F. McClure

Clerk

PROOF OF SERVICE

Subpoena for

Phyllis K. Fong, Inspector General, United States Department of Agriculture

Address 1400 Independence Avenue, S.W., Washington, D.C. 20250

before the Committee on Education and the Workforce



*U.S. House of Representatives
118th Congress*

Served by (print name) Mindy Barry

Title General Counsel, U.S. House of Representatives Committee on Education and the Workforce

Manner of service email

Date _____

Signature of Server _____

Address 2176 Rayburn House Office Building, Washington D.C. 20515

In accordance with the attached Schedule instructions and definitions, you, Phyllis K. Fong, Inspector General, U.S. Department of Agriculture (USDA OIG) are required to produce all documents and communications described below in your possession, custody, or control, in complete and unredacted form:

1. All documents and communications referring to allegations involving fraud committed by Feeding our Future (FOF) relating to any audit, inspection, or oversight conducted by USDA OIG in connection with FOF participation in federal child nutrition program (FCNP);
2. All documents and communications with employees or officials of the Minnesota Department of Education (MDE) referring to FOF and/or FOF sites;
3. All relevant USDA policies relating to the authority of USDA officials, employees, agents, contractors, or state partner agencies to respond to and prevent potential fraud or improper conduct;
4. All documents and communications relating to any actions recommended by USDA OIG (as a result of any audit, inspection, or oversight of FOF) to establish additional integrity measures designed to prevent fraud and improper payments regarding programs or funds administered by the Food and Nutrition Service;
5. All meeting notes referring to allegations involving fraud committed by FOF and/or FOF sites;
6. All documents and communications referring to Partners in Nutrition (d/b/a Partners in Quality Care) (PIN/PIQC) and allegations involving fraud committed by FOF and/or FOF sites;
7. All documents and communications with the FBI referring to allegations involving fraud committed by FOF and/or FOF sites;
8. All documents and communications referring to asset forfeiture funds and FOF and/or FOF sites;
9. All documents and communications between and among USDA OIG staff referring to Congressional requests from the Committee on Education and the Workforce;
10. All documents and communications referring or related to USDA OIG's preparation for the June 5, 2024 briefing for the Committee on Education and the Workforce on USDA OIG's actions related to allegations involving fraud committed by FOF and or FOF sites;
11. All formal or informal complaints made against a USDA OIG agent for failing to pursue allegations involving fraud committed by FOF and/or FOF sites;

12. All Memoranda of Understanding (MOUs) between USDA OIG and USDA, including the Food and Nutrition Service;
13. All case data sheets and Hotline submissions referring to allegations involving fraud of FCNP in Minnesota; and
14. All documents and communications related to cases with the following case numbers: CH-2752-0048, PS-2752-00023-21, PS-2741-00214-21, and CH-2752-0049.

Instructions for Responding to a Subpoena

U.S. House Committee on Education and the Workforce

118th Congress

1. In complying with the U.S. House Committee on Education and the Workforce's (Committee) subpoena, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You also should produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the subpoena has been or is also known by any other name or alias than herein denoted, the subpoena should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. All documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - b. Document numbers in the load file should match document Bates numbers and file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

- e. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to the subpoena should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the subpoena was served.
8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This subpoena is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 2176 of the Rayburn House Office Building or provided electronically to the Majority General Counsel at mindy.barry@mail.house.gov and the Minority Staff in Room 2101 of the Rayburn Office Building or provided electronically to the Minority General Counsels at ilana.brunner@mail.house.gov and christian.haines@mail.house.gov.
13. If compliance with the subpoena cannot be made in full by the date specified in the subpoena, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date

specified in the subpoena and provide an explanation for why full compliance is not possible by that date.

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. In the event that a portion of a document is redacted on the basis of alleged privilege, provide a privilege log containing the following information concerning any such redaction: (a) the privilege asserted; (b) the location of the redaction in the document; (c) the general subject matter of the redacted material; (d) the date, author, and addressee of the document, if not readily apparent; and (e) the relationship of the author and addressee to each other.
16. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, 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.
17. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, produce all documents which would be responsive as if the date or other descriptive detail were correct.
18. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
19. Unless otherwise specified, the period covered by this subpoena is from January 1, 2017, to the present.
20. 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; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

21. The term "document" in the subpoena, the schedule, or the instructions 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, forms, spreadsheets, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, 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, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) 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, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

22. The term "communication" in the subpoena, the schedule, or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
23. The terms "and" and "or" in the subpoena, the schedule, or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
24. The terms "person" or "persons" in the subpoena, the schedule, or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
25. The term "identify" in the subpoena, the schedule, or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
26. The terms "referring" or "relating" in the subpoena, the schedule, or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
27. The term "employee" in the subpoena, the schedule, or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, or subcontractor.

28. The terms "you" and "your" in the subpoena, the schedule, or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions, including USDA OIG's Headquarters and Midwest Regional Office.
29. The term "federal child nutrition program" in the subpoena, the schedule, or the instructions refer to the Child and Adult Food Program (CACFP) and the Summer Food Service Program (SFSP).
30. The terms "Feeding Our Future " and "FOF" in the subpoena, the schedule, or the instructions refer to the Feeding Our Future organization, firm, corporation, partnership, association, department, or other legal entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on Feeding Our Future's behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion and make decisions.
31. The terms "Minnesota Department of Education" and "MDE" in the subpoena, the schedule, or the instructions refer to the Minnesota Department of Education firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.
32. The terms "Partners in Nutrition (d/b/a Partners in Quality Care)" and "PIN/PIQC" in the subpoena, the schedule, or the instructions refer to the Partners in Nutrition and Partners in Quality Care organizations, firms, corporations, partnerships, associations, departments, or other legal entities, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on Feeding Our Future's behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion and make decisions.
33. The terms "Governor Walz" or "Governor" in the subpoena, the schedule, or the instructions refer to the Governor himself; his firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, executive officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, executive officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

34. The terms “United States Department of Agriculture” and “USDA” in the subpoena, the schedule, or the instructions refer to the USDA, its firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, executive officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, executive officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions, including USDA’s Midwest Regional Office and the Food and Nutrition Service.

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