

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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September 30, 2024

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, D.C. 20201

Dear Secretary Becerra:

The Committee on Oversight and Accountability (Committee) is conducting oversight of the Department of Health and Human Services' (HHS) development of the 2025 Dietary Guidelines for Americans (Dietary Guidelines). Specifically, the Committee is investigating a study by HHS' Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD) of alcohol intake and health, which is intended to inform the 2025 Dietary Guidelines and is duplicative of a study conducted by the National Academies of Sciences, Engineering, and Medicine (NASEM).¹ We are concerned that the process implemented by the Biden-Harris Administration for developing the Dietary Guidelines may not be fully in accordance with federal law. Specifically, the Consolidated Appropriations Act of 2023² and the National Nutrition Monitoring Act require the Dietary Guidelines to be "based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared"—and that the Secretaries of HHS and Agriculture approve of such guidance.³ But here, it appears a subagency, the ICCPUD, has been delegated that authority by HHS. Additionally, this authority has been delegated to ICCPUD despite NASEM completing a congressional directive to study the same topic—the relationship between alcohol intake and health—for consideration of the Dietary Guidelines.⁴ It is imperative that HHS be actively involved in the formation of the Dietary Guidelines through the statutory Dietary Guidelines Advisory Committee (DGAC) process, base the Dietary Guidelines on rigorous, sound, and objective scientific evidence, efficiently steward taxpayer dollars, and adhere to congressional intent.

The Committee's oversight is essential to determine whether legislation is necessary to address the authority of federal agencies to remove topics of study from the purview of an interagency Federal Advisory Committee and delegate their authority to a subagency or federal

¹ See Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability & Hon. Lisa McClain, Chairwoman, Subcomm. on Health Care & Fin. Servs. to Hon. Xavier Becerra, Sec'y, U.S. Dep't of Health & Human Servs. (Apr. 4, 2024).

² Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 § 772, 136 Stat. 4508 (Dec. 29, 2022).

³ National Nutrition Monitoring and Related Research Act of 1990, Pub. L. No. 110-445 § 301, 104 Stat. 1042 (Oct. 22, 1990).

⁴ *Supra*, n.2.

working group, like ICCPUD, that is not subject to the Federal Advisory Committee Act (FACA).⁵ Potential Committee legislation may explore additional guardrails to FACA to prevent agencies from subverting the transparency of Federal Advisory Committees and congressional oversight as they develop important federal recommendations, policies, and regulations for the American people. Additional oversight may help prevent federal agencies from developing duplicative studies that waste taxpayer dollars.

In February 2022, the HHS Office of the Assistant Secretary for Health and the U.S. Department of Agriculture (USDA) requested that ICCPUD study alcohol intake and health to help inform the Dietary Guidelines.⁶ Subsequently, HHS published a notice in the Federal Register of the scientific questions to be considered by the 2025 DGAC, none of which included questions regarding the relationship between health outcomes and the consumption of alcoholic beverages.⁷ Unlike the DGAC, ICCPUD does not publish information or provide access to meeting materials per FACA requirements. Therefore, the study of the correlation between alcohol intake and health to inform the Dietary Guidelines outside of the DGAC lacks transparency and oversight typical of the Dietary Guidelines.

Congress clearly stated its intent for NASEM to study alcohol intake and health. In the Consolidated Appropriations Act, 2023, Congress allocated \$1.3 million for NASEM to study the relationship between alcohol consumption and health outcomes, such as cancer, obesity, and heart disease to inform the 2025 Dietary Guidelines.⁸ In preparing for the 2020 Dietary Guidelines, the DGAC did not complete its alcohol review and only answered one research question regarding the relationship between alcohol use and all-cause mortality.⁹ Therefore, Congress determined it was necessary to direct NASEM to study the relationship between alcohol consumption and all types of health outcomes, in addition to all-cause mortality, for the 2025 Dietary Guidelines.¹⁰

In Section 773 of the Consolidated Appropriations Act, 2024, Congress reaffirmed its intent.¹¹ Congress again directed the Secretaries of USDA and HHS to “consider the findings and recommendations of the NASEM report in the development of the 2025 Dietary Guidelines for Americans” and reiterated that the Dietary Guidelines “shall be based on the preponderance of scientific and medical knowledge consistent with” 7 U.S.C. § 5341.¹²

⁵ Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (Oct. 6, 1972).

⁶ Interagency Coordinating Comm. on Preventing Underage Drinking Study on Alcohol Intake and Health, Background, *available at* <https://www.stopalcoholabuse.gov/research-resources/alcohol-intake-health.aspx>.

⁷ U.S. Dep’t of Health & Human Servs., Request for Comments on Scientific Questions To Be Examined To Support the Development of the Dietary Guidelines for Americans, 2025-2030, 87 Fed. Reg. 22540 (Apr. 15, 2022); Dietary Guidelines for Americans - Scientific Questions, *available at* <https://www.dietaryguidelines.gov/scientific-questions>.

⁸ *Supra*, n. 2.

⁹ U.S. Dep’t of Health & Human Servs. & U.S. Dep’t of Agric., NASEM Committee: Review of Evidence on Alcohol and Health Sponsor Briefing, 8, *available at* <https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/DCFB6F841AF48C802906589338CEED3333591F80E75?noSaveAs=1>.

¹⁰ *Supra*, n. 2.

¹¹ Consolidated Appropriations Act of 2024, Pub. L. No. 118-42 § 773 (Mar. 9, 2024).

¹² *Id.*

Despite NASEM’s directive to study alcohol intake and health, HHS appears to be taking improper authority over the development of the alcohol consumption guidelines and delegating it to ICCPUD.¹³ During the January 25-26, 2024 NASEM Review of Evidence on Alcohol and Health committee meeting, however, a representative of ICCPUD, led by HHS’ Substance Abuse and Mental Health Services Administration (SAMHSA), presented documents to support SAMHSA’s intention to study the relationship between alcohol-related mortality and alcohol consumption and use ICCPUD’s findings to inform the 2025 Dietary Guidelines.¹⁴ We are alarmed that HHS appears to be removing alcohol review from the DGAC and “delegating” it to ICCPUD,¹⁵ despite the statute directing the Secretaries of HHS and USDA to issue the Dietary Guidelines, not subagencies such as SAMHSA.¹⁶ By independently studying the impacts of alcohol intake on health to inform the 2025 Dietary Guidelines, HHS is duplicating—and may intend to undermine—the congressionally mandated effort already being carried out by NASEM.¹⁷

On April 4, 2024, the Committee initially requested documents and information related to HHS setting up a separate, parallel process to the DGAC, the content of ICCPUD meetings, potential conflicts of interest among ICCPUD participants, and any attempts by HHS to interfere with NASEM’s congressionally mandated review of alcohol and health.¹⁸ It has been 179 days since that request. Despite repeated efforts by the Committee to obtain compliance, HHS has only provided 31 responsive pages of documents out of the 2,561 pages of documents it produced. HHS’s production was also devoid of any internal documents or communications that would provide transparency to alleviate the Committee’s concerns about the delegation of its authority to ICCPUD.¹⁹

The Committee’s April 4 request for documents and communications was intended to enable oversight of HHS overreach into the Dietary Guidelines Advisory Committee’s activities to establish dietary recommendations for the consumption of alcoholic beverages.²⁰ HHS acknowledged receipt of the correspondence that same day.²¹ The Committee’s request set deadlines for HHS to provide a staff briefing by April 11 and provide the requested information

¹³ Interagency Coordinating Comm. on Preventing Underage Drinking, 2023 Comprehensive Plan for Preventing and Reducing Underage Drinking, 12, 17 (Apr. 6, 2022), *available at* https://www.stopalcoholabuse.gov/media/ReportToCongress/2023/report_main/ICCPUD_2023_Comprehensive_Plan.pdf.

¹⁴ See Nat’l Academies Review of Evidence of Alcohol and Health, Meeting 1B (Jan. 25-26, 2024), 6-7, *available at* <https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/D36C7490DF2904B73F7E8BD588907E1E7D2B39294A3F?noSaveAs=1>.

¹⁵ Dietary Guidelines for Americans, Projects Related to the *Dietary Guidelines – Alcoholic Beverages and Health*, *available at* <https://www.dietaryguidelines.gov/related-projects>.

¹⁶ *Supra*, n. 3.

¹⁷ *Supra*, n. 2.

¹⁸ *Supra*, n. 1 at 3-4.

¹⁹ See Letter from Melanie Anne Egorin, Asst. Sec’y for Legislation, U.S. Dep’t of Health & Human Servs., to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (Jun. 28, 2024).

²⁰ *Supra*, n. 1 at 1.

²¹ E-mail from HHS Staff to Committee Staff (Apr. 4, 2024), *on file with Committee staff*.

by April 18. HHS, however, did not schedule the briefing or produce any documents or communications by those dates.

On April 11, Committee staff requested that HHS provide dates for the requested briefing,²² to which HHS simply replied, “We are actively working to set up this briefing.”²³ Absent further updates, on April 18, Committee staff again asked to schedule a briefing “as soon as possible” and received no response from HHS.²⁴ Subsequently, on April 23, Committee staff again requested a briefing and the responsive documents, noting that the deadline had passed for both.²⁵ Later that day, HHS responded, saying it intended to schedule a joint briefing with a separate federal agency, which was noncompliant with the Committee’s request.²⁶

On April 30, HHS agreed to comply with the Committee’s request for a single briefing with both the agency and Committee staff, and the briefing was scheduled for May 14.²⁷ After the briefing, Committee staff again requested that HHS establish a production schedule for submitting responsive documents, as no documents had been received.²⁸ HHS replied that it “will look into these and circle back” and provided no time frame for producing documents.²⁹

On June 3, after still having received no documents or updates on the status of the production, Committee staff asked to schedule a call to discuss the status of HHS’s efforts.³⁰ On June 7, Committee staff and HHS spoke by phone, and the Committee agreed to accept rolling document productions and prioritize certain requests to expedite document delivery. On June 24, Committee staff asked whether HHS would deliver the first round of documents that week.³¹ HHS staff replied the following day, saying “We’re actively working on this request and hope to be in touch soon.”³²

On June 28, HHS produced 1,268 pages of documents consisting of 1,248 pages of public facing materials. HHS Bates-Stamped and transmitted the following publicly available documents: 2020-2025 Dietary Guidelines for Americans,³³ the Scientific Report of the 2020 Dietary Guidelines Advisory Committee,³⁴ various Dietary Guidelines infographics,³⁵ and seven

²² E-mail from Committee Staff to HHS Staff (Apr. 11, 2024), *on file with Committee staff*.

²³ E-mail from HHS Staff to Committee Staff (Apr. 11, 2024), *on file with Committee staff*.

²⁴ E-mail from Committee Staff to HHS Staff (Apr. 18, 2024), *on file with Committee staff*.

²⁵ E-mail from Committee Staff to HHS Staff (Apr. 23, 2024), *on file with Committee staff*.

²⁶ E-mail from HHS Staff to Committee Staff (Apr. 23, 2024), *on file with Committee staff*.

²⁷ E-mail from HHS Staff to Committee Staff (Apr. 30, 2024), *on file with Committee staff*.

²⁸ E-mail from Committee Staff to HHS Staff (May 14, 2024), *on file with Committee staff*.

²⁹ E-mail from HHS Staff to Committee Staff (May 15, 2024), *on file with Committee staff*.

³⁰ E-mail from Committee Staff to HHS Staff (Jun. 3, 2024), *on file with Committee staff*.

³¹ E-mail from Committee Staff to HHS Staff (Jun. 24, 2024), *on file with Committee staff*.

³² E-mail from HHS Staff to Committee Staff (Jun. 25, 2024), *on file with Committee staff*.

³³ Enclosures to *supra*, n. 18, marked COADGA000021-414, also available at https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf.

³⁴ Enclosures to *supra*, n. 18, marked COADGA000415-1249, also available at https://www.dietaryguidelines.gov/sites/default/files/2020-07/ScientificReport_of_the_2020DietaryGuidelinesAdvisoryCommittee_first-print.pdf.

³⁵ Enclosures to *supra*, n. 18, marked COADGA001250-1256, also available at <https://www.dietaryguidelines.gov/figures-infographics/infographics>;

Federal Register Notices related to activities of the 2025 Dietary Guidelines Advisory Committee.³⁶

Nearly four weeks after the first production, on July 23, Committee staff asked HHS whether it could expect further productions soon.³⁷ The next day, HHS responded that it would “check in on the status of things here.”³⁸ After no further reply, Committee staff wrote on August 8 asking for an update on the status of productions.³⁹ HHS replied later that day that it was “still working on this matter,” but it did not “have a specific timing update at the moment.”⁴⁰

On August 22, HHS produced 421 pages of documents consisting entirely of publicly available materials.⁴¹ In the second production, HHS Bates-Stamped and transmitted the ICCPUD 2023 Comprehensive Plan for Preventing and Reducing Underage Drinking⁴² and 28 academic articles related to the study of dietary patterns—but not germane to the Committee’s request.⁴³

After HHS’ continued failure to produce the requested documents, the Committee wrote again on September 5, reiterating its outstanding requests for documents and information by September 19, and noting that “[i]f HHS continues to withhold documents and communications

https://www.dietaryguidelines.gov/sites/default/files/2021-03/DGA_2020-2025_StartSimple_withMyPlate_English_color.pdf

³⁶ Enclosures to *supra*, n. 18, marked COADGA001257-1268, also available at 89 Fed. Reg. 25637 (Apr. 11, 2024); 88 Fed. Reg. 86348 (Dec. 13, 2023); 88 Fed. Reg. 46170 (Jul. 19, 2023); 88 Fed. Reg. 23444 (Apr. 17, 2023); 88 Fed. Reg. 3423 (Jan. 19, 2023); 87 Fed. Reg. 36137 (Jun. 15, 2022); 87 Fed. Reg. 22540 (Apr. 15, 2022).

³⁷ E-mail from Committee Staff to HHS Staff (Jul. 23, 2024), *on file with Committee staff*.

³⁸ E-mail from HHS Staff to Committee Staff (Jul. 24, 2024), *on file with Committee staff*.

³⁹ E-mail from Committee Staff to HHS Staff (Aug. 8, 2024), *on file with Committee staff*.

⁴⁰ E-mail from HHS Staff to Committee Staff (Aug. 8, 2024), *on file with Committee staff*.

⁴¹ See Letter from Melanie Anne Egorin, Asst. Sec’y for Legislation, U.S. Dep’t of Health & Human Servs., to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (Aug. 22, 2024).

⁴² Enclosures to *supra*, n. 41, marked COADGA001269-1301, also available at https://www.stopalcoholabuse.gov/media/ReportToCongress/2023/report_main/ICCPUD_2023_Comprehensive_Plan.pdf.

⁴³ Enclosures to *supra*, n. 41, marked COADGA001302-1689, also available at <https://pubmed.ncbi.nlm.nih.gov/34224561/>, <https://pubmed.ncbi.nlm.nih.gov/30982868/>, <https://pubmed.ncbi.nlm.nih.gov/30982864/>, <https://pubmed.ncbi.nlm.nih.gov/30445449/>, <https://pubmed.ncbi.nlm.nih.gov/30624593/>, <https://pubmed.ncbi.nlm.nih.gov/30982869/>, <https://pubmed.ncbi.nlm.nih.gov/30982863/>, <https://pubmed.ncbi.nlm.nih.gov/30982866/>, <https://pubmed.ncbi.nlm.nih.gov/30982876/>, <https://pubmed.ncbi.nlm.nih.gov/30982873/>, <https://pubmed.ncbi.nlm.nih.gov/30982878/>, <https://pubmed.ncbi.nlm.nih.gov/24452234/>, <https://pubmed.ncbi.nlm.nih.gov/37019363/>, <https://pubmed.ncbi.nlm.nih.gov/38522617/>, <https://pubmed.ncbi.nlm.nih.gov/33693925/>, <https://pubmed.ncbi.nlm.nih.gov/34195834/>, <https://pubmed.ncbi.nlm.nih.gov/34383914/>, <https://pubmed.ncbi.nlm.nih.gov/35704675/>, <https://pubmed.ncbi.nlm.nih.gov/38185492/>, <https://pubmed.ncbi.nlm.nih.gov/34918032/>, <https://pubmed.ncbi.nlm.nih.gov/33734285/>, <https://pubmed.ncbi.nlm.nih.gov/34987271/>, <https://pubmed.ncbi.nlm.nih.gov/34463743/>, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9996304/>, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3289141/>, [https://www.jandonline.org/article/S2212-2672\(14\)01770-5/fulltext](https://www.jandonline.org/article/S2212-2672(14)01770-5/fulltext), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9469881/#:~:text=Results,3%20snacks%20on%20that%20day>, <https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1328&context=jflp>.

on this matter, the Committee will consider other means, including compulsory process.”⁴⁴ HHS acknowledged receipt of the letter the following day.⁴⁵

On the evening of September 19, HHS produced 872 pages of documents, consisting of 861 pages of presentation slides and meeting summaries of the 2025 DGAC.⁴⁶ These documents were not only available online, but also nonresponsive to the Committee’s requests for information pertaining to the ICCPUD Subcommittee on Alcohol Intake and Health, including its meeting minutes and notes.⁴⁷

It has now been 179 days since the Committee’s initial request, and HHS has produced only 31 non-publicly available documents. As a result, the attached subpoena is being issued pursuant to the authority delegated to the Chairman of the Committee under Rule XI, clause 2(m)(1)(B) of the Rules of the House of Representatives and Rule 12(g) of the Committee’s Rules.

The Committee has oversight jurisdiction and “may at any time conduct investigations of any matter...” under House Rule X, clause 4(c)(2), notwithstanding concurrent jurisdiction maintained by another standing committee. Additionally, House Rule X, clause 1(n)(1), (6), (10) charges the Committee with legislative jurisdiction over “[f]ederal civil service, including intergovernmental personnel...”, “[o]verall economy, efficiency, and management of government operations and activities...” and “[p]ublic information and records.”

As Chairman of the Committee, I urge you to cooperate speedily and in good faith with this subpoena. If you have any questions regarding this subpoena, please coordinate with Oversight Committee staff at (202) 225-5074.

Sincerely,



James Comer
Chairman
Committee on Oversight and Accountability

⁴⁴ See Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability & Hon. Lisa McClain, Chairwoman, Subcomm. on Health Care & Fin. Servs. to Hon. Xavier Becerra, Sec’y, U.S. Dep’t of Health & Human Servs. (Sept. 5, 2024).

⁴⁵ E-mail from HHS Staff to Committee Staff (Sept. 6, 2024), *on file with Committee staff*.

⁴⁶ See Letter from Melanie Anne Egorin, Asst. Sec’y for Legislation, U.S. Dep’t of Health & Human Servs., to Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability (Sept. 19, 2024).

⁴⁷ Enclosure to *Id.*, also available at <https://www.dietaryguidelines.gov/get-involved/attend-virtual-meetings>.