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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

May 6, 2016

Dr. Robert Califf
Commissioner
U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20093

Dear Commissioner Califf:

We write to share our concerns that the Food and Drug Administration's (FDA or the Agency) draft guidances are not being revised, finalized, or withdrawn in a timely manner. On May 6, 2014, we wrote to express our concerns regarding the use of draft guidances to make substantive policy changes, and we appreciate the thorough response sent on March 9, 2015, that highlighted what is being done to address those concerns.

We applaud the implementation of a centralized, easy-to-use webpage for searching FDA guidance documents, and hope the Agency will continue to keep it as up to date as possible. We also appreciate the action the Agency took last May withdrawing 47 guidance documents considered "outdated and unfinished." These are important steps in improving the transparency and efficiency the biomedical industry needs to bring life-saving medical products to patients, and in helping all regulated parties comply with applicable binding law.

However, despite these improvements, our concern remains that draft guidances are not being revised, finalized, or withdrawn in a timely manner. Doctors and companies continue to express concerns with how the FDA prepares and uses draft guidances in carrying out the Agency's regulatory responsibilities and feel no choice but to follow draft guidances as if final, even if the most up-to-date science would suggest an alternative path. For example, we have heard concerns that the FDA is sending—and sometimes publicizing—"Untitled" or "It has come to our attention" letters that use new "thinking" only seen in draft guidance to raise concerns about regulated products.

To help us better understand the work you are doing to improve the FDA's guidance process, we respectfully request that you provide updated information and answers to the following questions:

1. The March 2015 response included a table indicating how long it takes each Center to finalize a draft guidance document. It was revealing to see that on average it takes between 425 and 797 days to finalize a draft guidance.

- a. Please provide an update on this data. In particular, we would like to know if there has been any change in the median number of days. Please provide the minimum, maximum, and median number of days it has taken each Center to finalize guidances for all guidances finalized between July 1, 2015, and today.
2. In your response, you included an appendix listing 172 draft guidances published before December 31, 2013, that were still pending as of the date of your response. Please provide an updated list that identifies each draft guidance document that was published before December 31, 2015, and still is pending.
3. Your response stated that the FDA's Centers and Offices "are continuing to work on their plans for which guidances will be withdrawn, reissued, or finalized." Please provide an update on the plan for each Center and Office.
4. The withdrawal of 47 guidances was a good step in addressing our concern that draft guidances are not being revised, finalized, or withdrawn in a timely manner. Are you planning to require Centers and Offices to systemically review guidances and withdraw, revise, or finalize those outstanding documents in a timely manner? Please describe any such plans.
5. One of the questions we raised two years ago asked how the Agency ensures that staff do not follow the guidance in the absence of any other policy or final guidance. You indicated that the Agency provides initial and ongoing training for employees about how to develop and use guidance documents. Please provide a detailed description of who conducts these trainings, how frequently they occur, and the content and forum of the trainings. Please also provide copies of all training materials, including notes from presenters, slides or videos, and any review of the effectiveness of such training by the FDA or a contractor.
6. In your March 2015 response, you stated that FDA staff may sometimes reach the same result as proposed in a draft guidance when applying the statute and regulations, explaining that "[a] draft guidance reflects FDA current thinking, and thus also usually reflects its current interpretation of the statute and regulations." However, whenever the FDA publishes a draft guidance, it includes a statement that the draft guidance document will represent the Agency's current thinking only "when finalized." Please clarify whether a draft guidance which has not been finalized should be construed as expressing the FDA's current thinking.

Thank you for your consideration of this request. If you have any questions, please have your staff reach out to Chairman Alexander's staff Grace Stuntz at (202) 224-6770.

Sincerely,



Lamar Alexander
Chairman



Richard Burr
U.S. Senator



Johnny Isakson
U.S. Senator



Orrin G. Hatch
U.S. Senator