DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

The General Counsel
Washington, D.C. 20201

EXHIBIT 17

The Honorable Kenny C. Hulshof
Chairman, Investigative Subcommittee
Committee on Standards of Official Conduct
U.S. Houses of Representatives
Washington, D.C. 20515

The Honorable Michael F. Doyle
Ranking Member, Investigative Subcommittee
Committee on Standards of Official Conduct
U.S. House of Representatives
Washington, D.C. 20515

Re: Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003

Dear Mr. Chairman and Ranking Member Doyle:

By letter dated July 8, 2004, the Investigative Subcommittee of the U.S. House of Representatives' Committee on Standards of Official Conduct, issued certain questions to Secretary Tommy G. Thompson regarding the above-referenced investigation. Pursuant to my conversation with Kenneth E. Kellner, Counsel to the Investigative Subcommittee, the Subcommittee extended the date by which it requested a response by one week, to August 4, 2004.

Please find enclosed Secretary Thompson's written responses to the Subcommittee's questions, executed under oath, pursuant to the Subcommittee's request that the submission be made under oath.

Sincerely,

Alex M. Azar II

Enclosure

WRITTEN RESPONSE OF THE HONORABLE TOMMY G. THOMPSON, SECRETARY OF HEALTH & HUMAN SERVICES

I, Tommy G. Thompson, make the following responses, under penalty of perjury, to the questions propounded to me by letter dated July 8, 2004 from the Investigative Subcommittee of the Committee on Standards of Official Conduct of the United States House of Representatives in the Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug Improvement and Modernization Act of 2003.

I understand that the resolution adopted by the Committee states that "the Committee intends that all witnesses who provide testimony before the Investigative Subcommittee should be sequestered and should not communicate with any other witnesses regarding any aspect of their testimony unless the Investigative Committee permits otherwise." Although this request by the Committee is not binding, I have endeavored to accommodate the Committee's request. Therefore, I have not discussed the substance of my responses to the Subcommittee's questions with my senior staff (except for the members of the Office of the General Counsel who have assisted in the preparation of this written response), as I normally would, to refresh my recollections, set forth below, of the events that took place on the night of November 21, 2003 and early morning of November 22, 2003. The Subcommittee's questions deal with a very discrete and short interaction that occurred late at night or early in the morning over six months ago and that was but a very small part of a very active and lengthy process related to the passage of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the Medicare Modernization Act). Accordingly, my memory of these events is somewhat vague, and I will do my best to provide information to the Subcommittee, within the confines that the Committee has requested regarding discussions with other individuals.

1. To the best of your ability, please describe how you came to be present on the House

floor during the vote on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (hereafter the "Medicare Prescription Drug Act") on November 22, 2003. Please include in your response a description of the purpose of your presence on the House floor during the vote.

I cannot remember all the details of how I came to be present on the House floor during the vote on the Medicare Modernization Act. My present recollection is that I was in the Capitol Building from approximately 10:00 p.m. on the evening of November 21, 2003 until about 6:30 a.m. the following day. At first, I was in the office that was serving as the headquarters for the vote; this may have been an office of Majority Leader DeLay, but I cannot be sure of that fact. As it got closer to voting, I was escorted to the House cloakroom, and was asked to talk to Members to provide them with any information they might need regarding the proposed legislation as they decided how to vote on the Medicare Modernization Act. I believe White House staff and departmental staff were with me in the cloakroom and were asking me to speak with particular Members. At various points in time, Members would also ask me to come with them onto the floor of the House to speak with other Members to see if they would vote for the legislation and to answer their questions. My purpose for being at the Capitol Building and on the floor of the House during the vote was to assist in securing passage of the Medicare Modernization Act and to answer any questions Members might have with regard to the proposed legislation.

2. **Please identify any aides or officials from the Department of Health and Human Services and from the White House that accompanied you to the House of Representatives on November 22, 2004 [sic], and/or were present on the House floor during the vote on the Medicare Prescription Drug Act. Please provide the full name, title, employing office, address, and telephone number for each individual you identify in your response.**

As I previously mentioned, I was in the Capitol Building for a considerable period of time, and therefore cannot remember every individual who was there from the White House or the

Department. Staff from the Department and the White House were coming and going all night. I do not recall staff from either entity being on the floor of the House, but cannot be certain of that fact. To the best of my recollection, the following individuals from the Department or the White House were with me at one point or another that evening:

- Jennifer Young, Assistant Secretary for Legislation
  Office of the Assistant Secretary for Legislation
  Department of Health and Human Services
  200 Independence Avenue, S.W.
  Washington, D.C. 20201
  (202) 690-7627

- I do not currently recall who from the Centers for Medicare and Medicaid Services (CMS) was there, but I would assume that individuals from CMS were there. I believe Thomas A. Scully was coming and going all night. He is currently Senior Counsel, Alston & Bird LLP, 601 Pennsylvania Avenue, N.W., Washington, D.C. 20004, (202) 756-3459.

- Amy Jensen-Cuniffe, Special Assistant to the President for Legislative Affairs
  Office of Legislative Affairs, House Liaison Office
  The White House
  1600 Pennsylvania Avenue, N.W.
  Washington, D.C. 20500
  (202) 456-6620

- Possibly Eric Pelletier, Deputy Assistant to the President for Legislative Affairs
  Office of Legislative Affairs
  The White House
  1600 Pennsylvania Avenue, N.W.
  Washington, D.C. 20500
  (202) 456-2230

- Doug Badger, Special Assistant to the President for Economic Policy
  National Economic Council
  Eisenhower Executive Office Building
  1650 Pennsylvania Avenue, N.W.
  Washington, D.C. 20501
  (202) 456-2800

- David W. Hobbs, Assistant to the President for Legislative Affairs
  Office of Legislative Affairs
  The White House

1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500
(202) 456-2230

3. **Please explain the circumstances under which you came to speak with Representative Nick Smith during the vote on the Medicare Prescription Drug Act on November 22, 2004 [sic].**

Someone asked me to talk to Representative Smith because he or she thought that Representative Smith could be convinced to change his mind and vote in favor of the Medicare Modernization Act. I do not remember who it was who asked me to speak to Representative Smith; it is possible that it may have been a Member from Michigan, but I am not sure.

4. **Please describe in as much detail as possible your conversations with Representative Nick Smith during the vote on Medicare Prescription Drug Act, including, to the best of your recollection, a description of the statements made by you to Representative Smith, and statements made by Representative Smith to you. Please also identify any other persons who participated in your conversations with Representative Nick Smith, and summarize any statements made by those persons.**

My conversation with Representative Nick Smith was brief. I remember asking Representative Smith if he had any questions on the bill that I could answer, or if there was any information that I could provide to him. He said no. I also asked him if there was any chance that he would vote for the bill. He said no. At some point, I remember Speaker Hastert coming over while I was in the presence of Representative Smith. I recall the Speaker saying, entirely in a joking manner, that if Representative Smith did not vote for the bill, he would wrestle him or sit on him. Another Member also spoke with Representative Smith at the time. Other Members were around Representative Smith and me at the time of our discussion, but I do not recall who they were. I believe the Member who had asked me to speak with Representative Smith was present during our discussion. While I was present, one Member – I do not recall who – told Representative Smith that, since Representative Smith was not running for re-election,

Representative Smith should vote for the bill because it is a good piece of legislation. I believe this was the first time that I learned that Representative Smith was not running for reelection. This discussion took place on the floor, and then some Member – I do not recall who – asked me to talk to someone else about the bill. There were Members all around during my conversation with Representative Smith. At some point, either during my conversation with Representative Smith, or shortly thereafter, I learned that Representative Smith had a son who was running for Representative Smith's seat in the House of Representatives. To the best of my recollection, no White House or Department staff were present during my conversation with Representative Smith.

5. **Please describe any communication you had with officials of the Federal Bureau of Investigation or the Department of Justice regarding any matter related to allegations made by Representative Nick Smith.**

I have not had any communications with officials of the Federal Bureau of Investigation or the Department of Justice regarding any matter related to the allegations made by Representative Smith.

6. **Please describe your understanding of Representative Nick Smith's position on the Medicare Prescription Drug Act both before and after you spoke with him on the floor of the House of Representatives on November 22, 2003.**

Prior to speaking with Representative Smith on the floor of the House on November 21/22, 2003, it was my understanding that Representative Smith was opposed to the Medicare Modernization Act. I believe I learned this from the Member who asked me to speak to him. Nothing in my conversation with Representative Smith caused me to think that he would change his mind.

7. **As you may be aware, on November 23, 2003, the day after the vote on the Medicare bill, Rep. Smith issued a press statement in which he said the Medicare vote was held open "as bribes and special deals were offered to convince members to vote yes." Please state whether you have any knowledge as to what Representative Smith was referring to when he uses the terms "bribes" and "special deals."**

It would not be appropriate for me to speculate as to what Representative Smith meant in that statement.

8. Please state whether in any conversation with you, Representative Nick Smith referenced any pressure placed on him to vote in favor of the Medicare Prescription Drug Act.

In my conversation with Representative Smith, he made no reference to any pressure being placed on him to vote in favor of the Medicare Modernization Act. Representative Smith seemed very resolute to me in his opposition to the bill.

9. Please state whether you have any knowledge of any person suggesting or mentioning offers of support for Brad Smith's congressional campaign if Representative Smith voted in favor of the Medicare Prescription Drug Act.

Apart from what I have read in the press subsequently, I have no knowledge of any person suggesting or mentioning offers of support for Brad Smith's congressional campaign if Representative Smith voted in favor of the Medicare Modernization Act. As I mentioned previously, I believe that night was the first time that I learned that Representative Smith was not running for re-election, and either during my conversation with Representative Smith, or shortly thereafter, I learned that his son was running for Representative Smith's seat in the House of Representatives.

10. Please provide any information you have about a possible endorsement of Brad Smith by the National Republican Congressional Committee if Representative Nick Smith voted in favor of the Medicare Prescription Drug Act.

I have no such knowledge.

11. Please state whether in any conversation with you, Representative Nick Smith referenced any dollar amount that he had been offered by anyone for his son's campaign.

During my conversation with him, Representative Smith made no such reference.

12. Please state whether anyone suggested to you the possibility of using Brad Smith's campaign to persuade Representative Nick Smith to vote in favor of the Medicare bill.

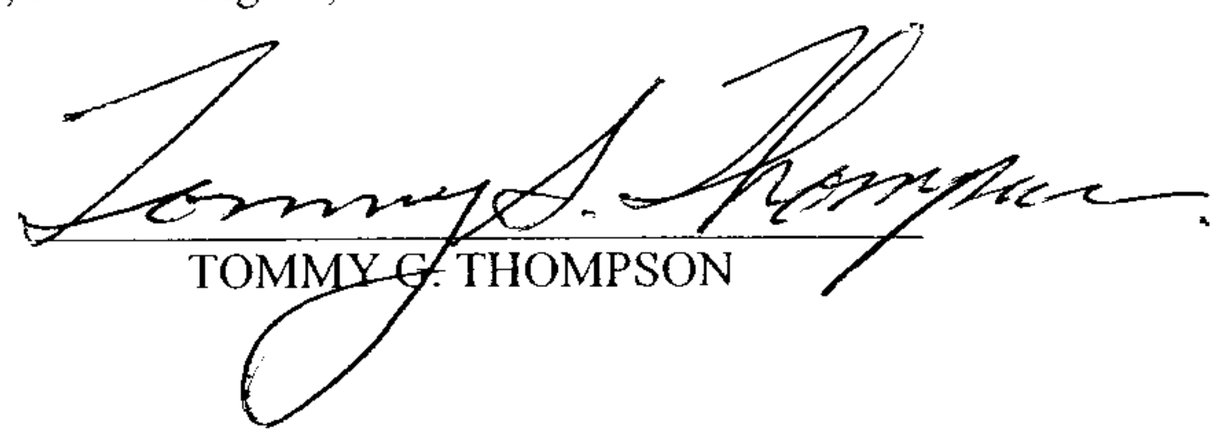
No one made any such suggestion to me.

13. Please provide any other information that you have that you think might be relevant to the Investigative Subcommittee's inquiry. Please include in your response the names of any individuals who you might think would have information relevant to this inquiry.

Beyond what I have related above, I do not believe that I have any further information that might be relevant to the Investigative Subcommittee's inquiry.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that, to the best of my recollection, the foregoing is true and correct.

Executed on August 4, 2004, in Washington, District of Columbia.



TOMMY G. THOMPSON