

CHARLENE MIERS FOUNDATION FOR CANCER RESEARCH

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April 14, 2011

Harold Varmus, M.D.
Director
National Cancer Institute
31 Center Drive, Suite 11A48
Bethesda, Maryland 20892

Re: FY 2013 NCI Bypass Budget

Dear Dr. Varmus:

Our organization is a private foundation organized in Oklahoma that is an advocate for increased appropriations to the National Cancer Institute ("NCI"). We are a member of One Voice Against Cancer ("OVAC") a national coalition of more than thirty organizations advocating increased federal funding of cancer research.

We act in memory and honor of Charlene B. Miers of Tulsa who died of brain cancer November 10, 2007, after she courageously fought the disease for seventeen months while receiving what she considered, and NCI and other experts advised her, were the best known treatments available.

We write to urge you and NCI to expedite and enlarge the process of announcement, publication, and submission of the NCI budget you are authorized and required to submit directly to the President ("NCI Bypass Budget") pursuant to the National Cancer Act of 1971 ("Act"). We recommend this be done in coordination with and/or made a part of the processes (including budget submission timeline/schedule) established by the Office of Management and Budget ("OMB") with respect to executive branch departments for formulation of the President's Budget submitted to Congress for each fiscal year.

We ask that our recommended approach be taken for the NCI Bypass Budget for Fiscal Year 2013 ("FY 2013 NCI Bypass Budget"); and **we recommend the FY 2013 NCI Bypass Budget be submitted to the President, OMB, and published by NCI on or before September 15, 2011, or any earlier specific deadline provided by OMB for executive branch agencies to make budget submissions for FY 2013.**

We also recommend to the extent permissible under the Act and other governing federal laws and regulations that at the same time a copy of the FY2013 NCI Bypass Budget be furnished by NCI directly to all members the budget and appropriations committees of the U. S. House of Representatives and Senate.

The federal budget is receiving intense and perhaps unprecedented consideration by the President, members of Congress, their constituents, lobbyists and media. We believe Congressional funding for urgently needed cancer research through the National Cancer Program under leadership of NCI and other agencies is at great risk of being frozen or significantly curtailed by the expected reexamination, debate and action on amounts and purposes of expenditures under the federal budget in coming years.

A budget instrument entitled *Cancer/Changing the Conversation, The Nation's Investment in Cancer Research, An Annual Plan and Budget Proposal for Fiscal Year 2012* ("FY 2012 NCI Bypass Budget"), was recently published, and became available to us by its posting on the NCI website, www.cancer.org, on or about April 4, 2011. We understand that the President's FY2012 Budget was published and submitted to Congress approximately seven weeks earlier on February 14, 2011.

The FY 2012 NCI Bypass Budget is a powerful and definitive document. It describes the current status of the National Cancer Program. It states the best professional judgment of you as Director of NCI and its scientists of what appropriations are needed to most effectively prevent, diagnose and treat cancer, and to do research essential to discover cures of cancer. It tells the President and Congress, and their constituents, where more funding will make the greatest difference in reducing cancer incidence and mortality. It is, in our view, an updated National Cancer Program strategic plan to control and defeat cancer, which we consider a lethal epidemic now causing death of one person every minute of every day in the United States.

Our understanding of the federal budget process is that OMB, as a part of the executive branch and White House, publishes detailed guidelines containing requirements for executive branch agencies; and that OMB directs they make their budget submissions to OMB for every fiscal year in September of the calendar year, to be used by OMB for formulation of the President's Budget that must be presented to Congress for that fiscal year in February of the next calendar year.

Although OMB guidance does not appear to expressly refer to the NCI Bypass Budget, it also does not appear to expressly exclude the NCI from the OMB and President's Budget formulation process. In other words, it appears that OMB and the President include NCI along with other institutes in the National Institutes of Health, and the Department of Health and Humans Services, in the budget formulation process and their related evaluation of all federal agencies' programs, activity and funding needs for each fiscal year. This is indicated in OMB Circular No. A-11 (2010), www.whitehouse.gov/omb/.

Our review of timing of publication of the NCI FY 2012 Bypass Budget and NCI Bypass Budgets for certain prior fiscal years indicates some inconsistency and uncertain correlation between it as an NCI budget statement going directly the President, and the OMB formulation process for preparation and submission of the President's Budget to Congress for those fiscal years. This has led us to a question of whether and to what extent OMB and the President had an opportunity to give full or appropriate

consideration to the NCI Bypass Budget (to include the expert scientific and medical analysis in support of it) during the phase of actual formulation and preparation the President's Budget sent to Congress for the particular fiscal year's funding of NCI cancer research.

In this regard, we note that the amount proposed for appropriation to the NCI in what is referred to as FY 2012 NCI "Congressional Justification", and we understand to have been published in connection with and as support for the President's Budget sent to Congress on February 14, 2011, is \$ 5,196,136; while the amount requested in the FY 2012 NCI Bypass Budget published by the NCI on April 4, 2011, based upon NCI's plan for and scientific determination of needed cancer research in FY 2012, is a much larger \$5,869,857.

We consider the National Cancer Act of 1971 as explicit authority and mandate for a submission of the NCI Bypass Budget for a fiscal year to the President by the Director of the NCI.

This we believe provides an opportunity as well as a directive.

It is a federal law enacted by Congress that makes the NCI Bypass Budget a special preemptive tool of NCI and the President for achieving the mission of the National Cancer Program. We believe the Act contemplates and envisions the NCI Bypass Budget being submitted to the President at the time and in the manner that will make it most useful to the President in determining what to propose to Congress in the President's Budget as to resources that should be committed to the National Cancer Program through federal budget appropriations to NCI for a fiscal year.

It also is our belief the NCI Bypass Budget should be considered, treated and *made available to the President as soon as possible*, as the best expert overview, analysis and statement in support of appropriate federal government funding of cancer research. Its primary purpose is formulation of the President's Budget to be submitted by the President to Congress for each fiscal year.

In one extensive study of the history of the Act, the NCI Bypass Budget is described as a feature of the law that was included to assure most direct and *expeditious* consideration by the President of the National Cancer Program effort led by NCI. *See*, Richard A. Rettig, *Cancer Crusade, The Story of the National Cancer Act of 1971* (Princeton University Press, 1977), stating that in signing the Act, President Nixon noted that the Act's provision that the NCI budget be submitted directly to him was to place full weight of the Presidency behind the National Cancer Program and to enable the President to take personal command of the Federal effort to conquer cancer so its activities need not be stymied by familiar dangers of bureaucracy and red tape; and that the explicit provision for NCI budgetary by-pass of other agency or department processing and direct submission to OMB was to demonstrate and implement a new and higher *priority* (*i.e.* precedence in date or position of publication) on cancer in the federal government.

Thus, the intended meaning and effect the NCI Bypass Budget seems diminished or unrealized if it is submitted to the President after the close of the time period specifically established by the President and OMB for formulation of the President's Budget to be sent to Congress for a fiscal year. The provisions of the Act do not indicate some other budget instrument, including a Congressional Justification, is intended to serve as a substitute for the NCI Bypass Budget at the "starting line" and beginning of the specific time period scheduled for formulation of the President's Budget. The Act and National Cancer Program provided for under it appear to contemplate and suggest that the NCI Bypass Budget should be the first thing provided to OMB by NCI for use and consideration in formulation of the President's Budget and determining recommended appropriations to NCI for a fiscal year. It should be provided, in the form and amounts determined by the Director, and speak for the NCI at the same time (if not before) other agency budgets are submitted to OMB under its published schedules and timelines for formulation of the President's Budget.

Aside from our interpretation of the published guidance and the terms and history of the Act, our organization considers the NCI Bypass Budget an extremely valuable, perhaps essential, reference and tool for advocating to members of Congress that they appropriate federal funds to NCI and increase the nation's investment in cancer research under the National Cancer Program. The NCI Bypass Budget being available at the very outset of the OMB formulation phase of the process for submission of the President's Budget to Congress each fiscal year will give our organization, other organizations and institutions, and thousands of their volunteer members and supporters, much better ability *to advocate to both the President and Congress* increased NCI funding for a coming fiscal year.

Thus, we respectfully recommend that you and the NCI submit the FY 2013 NCI Bypass Budget to the President in the form authorized by the Act and determined appropriate by you and the NCI, *and* no later than at the time, and containing information prescribed by, the general guidelines and rules established and published by OMB for executive branch agencies, which we understand OMB Circular No. A-11 (2010) presently requires be in September 2011 for FY 2013.

We also suggest and recommend that if the President's FY 2013 Budget proposes an amount of appropriations to NCI for FY 2013 that is materially less than that proposed in the FY 2013 NCI Bypass Budget, that the NCI promptly determine and publish an easily understood listing and description that includes:

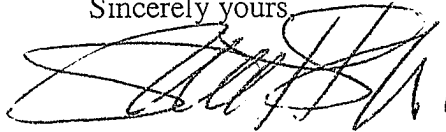
(1) the National Cancer Program cancer control and research projects or action recommended to be funded as a part of the FY 2013 NCI Bypass Budget that would not be funded for and accomplished by NCI in and for FY 2013 under the President's FY 2013 Budget, and

(2) an NCI recommended plan by which any or all of those projects or action could be best accomplished for, or made a part of, the National Cancer Program through alternative funding and efforts of other federal agencies, States, institutions, groups, organizations or businesses.

We support the NCI and, as indicated, try to advocate and encourage that it be provided the maximum possible funding for its efforts. We assume there may be many factors and circumstances, or practical considerations, involved in the budget requirements related to NCI's activities that we do not know or fully appreciate. However, we do believe the NCI Bypass Budget is a fundamental part of NCI's intended priorities, structure and operations leading the National Cancer Program under governing federal law. Thus, we urge that it be prepared, completed and submitted at the earliest time possible in order to be considered to the same extent and for the same period as budget submissions of other federal agencies in formulation of the President's Budget for each fiscal year.

Thank you for considering this suggestion, and for your and NCI's service in accomplishing its mission under the National Cancer Program to control and end cancer.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Sheppard F. Miers, Jr.', written in a cursive style.

Sheppard F. Miers, Jr.
President/Director