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Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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LAWRENCE J. BRADY
STAFF DIRECTOR

May 6, 2013

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Madam Secretary:

The Committee on Oversight and Government Reform is conducting oversight of the implementation of the Patient Protection and Affordable Care Act. PPACA required that newly established health insurance exchanges establish and provide grants to “Navigators”, new entities that are supposed to conduct unbiased educational and outreach efforts and facilitate patient enrollment in the new health insurance exchanges.¹ A proposed rule also describes the role of “in-person assisters” (Assisters) who will conduct similar activities in state-based and partnership exchanges.² The Committee has several concerns about how the Department of Health and Human Services will fund, select, train, and oversee the Navigators and Assisters. We are writing to request documents and information to assist the Committee’s oversight and to ensure that taxpayer money is not being inappropriately or unlawfully used to promote the rollout of PPACA.

Source of Navigator and Assister Funding

Given the specific funding restrictions for Navigators and the identical role served by Navigators and Assisters, we are concerned that you lack the legal authority to provide federal funding for Assisters in state-based exchanges and partnership exchanges. In an April 19, 2013, letter we sent you, we expressed concerns that you may lack the legal authority to transfer funds from the non-reoccurring expense fund and PPACA’s Prevention and Public Health Fund to use to implement the federally facilitated exchanges.³

¹ PATIENT PROTECTION AND AFFORDABLE CARE ACT, PUB. LAW 111-148 §1311.

² 66 Fed. Reg. 20581 (proposed Apr. 5, 2013) (to be codified at 45 C.F.R pt. 155).

³ Letter from Oversight & Govt. Reform Committee to Secretary Sebelius (April 19, 2013).

In federal and state partnership exchanges, Navigators will be funded through federal grants from HHS, whereas state-based exchanges are responsible for funding their own Navigators through state-based grants.⁴ While HHS allocated \$54 million⁵ in federal grants for Navigators in federal and partnership exchanges, Section 1311 of PPACA prohibits states from using federal exchange establishment grants on the Navigators program. In an April 18th briefing with Committee staff, HHS officials confirmed that Section 1311 exchange establishment funds may not be used to fund Navigators in any exchanges.⁶ It appears that because of the prohibition of federal funds toward Navigators in state-based exchanges, HHS devised the Assister program through the rulemaking process to effectively replace the Navigator program in state-based exchanges.

During the April 18, 2013, briefing, HHS officials admitted to Committee staff that there is no statutory authority for the Assister program, there is no functional difference between Navigators and Assisters, and the role and training standards for both are exactly the same.⁷ However, Assisters will be funded through unlimited federal exchange establishment funds, whereas PPACA specifically prohibits those funds to be used for the Navigator program in state-based and partnership exchanges.⁸ It appears that HHS devised the Assisters program to circumvent a statutory mandate prohibiting federal funds for the Navigator program use by simply using another name for the same program.

Navigator and Assister Training Standards

As a result of the information the Committee received on the proposed Navigator and Assister rule at the April 18, 2013, briefing, we believe the current training standards for Navigators and Assisters are inadequate and could lead to the dissemination of misinformation to consumers. HHS is ultimately responsible for developing and operating the training program which must prepare both Navigators and Assisters to provide information to consumers about health insurance, the Exchange, Qualified Health Plans, and insurance affordability programs including premium tax credits, Medicaid and the Children's Health Insurance Program.⁹

During the April 18, 2013, briefing, HHS revealed that the Navigator and Assister training programs, as presently designed, will be conducted solely online¹⁰ and the entirety of the training will only last for 20 to 30 hours.¹¹ HHS does not yet know what

⁴ See *supra* note 2 at 20583.

⁵ Oversight & Government Reform Briefing by HHS Officials on Navigators and Assisters Programs (April 18, 2010) [hereinafter BRIEFING]. According to HHS officials, HHS allocated \$54 million to fund the Navigator program in federal and partnership exchanges for 2013 alone, and the Committee was told that this amount is subject to increase in future years.

⁶ *Id.*

⁷ *Id.*

⁸ <http://cciiio.cms.gov/resources/files/marketplace-ways-to-help-4-18-2013.pdf>.

⁹ See *supra* note 2 at 20583.

¹⁰ See BRIEFING, *supra* note 5.

¹¹ *Id.*

will constitute a passing grade on the exam.¹² The Committee has also learned that prospective Navigators and Assisters will be allowed to retake the online exam an unlimited number of times¹³ and that their identity will only be verified through an online authentication system,¹⁴ creating the potential for fraud. Additionally, applicants may be hired as Navigators before they have even begun the training program or passed the exam.¹⁵ Lastly, HHS is operating under the assumption that most Navigator and Assister applicants will have no prior knowledge about the functioning of health insurance markets.¹⁶ Therefore, we are concerned that the Navigators and Assisters will be poorly trained and unprepared to explain the many health insurance options and the many provisions of PPACA to the general public, thereby wasting tens of millions of taxpayer dollars on an outreach effort that is poorly conceived and may not be lawfully authorized.

We are also concerned that there are no additional qualification requirements for Navigators and Assisters, such as background checks or fingerprinting. As the proposed rule now stands, HHS confirmed with Committee staff that the following groups could serve as Navigators or Assisters:¹⁷

- Convicted felons
- Individuals convicted of identity theft
- Individuals who failed to graduate from high school

Officials in some states have expressed their support for background checks and screenings prior to handling confidential consumer information; these officials, however, have received significant pushback from outside groups.¹⁸ Because Navigators and Assisters will have access to personal and sensitive information such as Social Security numbers and tax returns, we believe they should be held to the same hiring standard as U.S. Census and IRS employees, who are subjected to FBI background checks during the application process and fingerprinting once hired.¹⁹

Navigator and Assisters Oversight

Because Navigators and Assisters will have access to sensitive, personal information, we are concerned that HHS currently lacks a plan for federal oversight of the Navigators and Assisters programs. According to the April 18th briefing, HHS plans to oversee the Navigators and Assisters in the same way that other grants are handled, with quarterly reports from the grant organization overviewed by one program manager

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See, e.g., Chad Terhune, *Call for screening of healthcare enrollers meets resistance*, LA TIMES (March 15, 2013).

¹⁹ <http://www.census.gov/hrd/www/jobs/background.html>.

responsible for multiple grant awards.²⁰ HHS officials informed Committee staff that there are no present plans to check in with individual Navigators or Assisters to evaluate their job performance.²¹ We are concerned that HHS does not yet have a plan for how organizations will report misconduct and wrongdoings of individual Navigators and Assisters, and it is also unclear how Navigators and Assisters will be held accountable for mistakes or misinformation. According to the briefing, HHS intends current staff to assume Navigator and Assister oversight, in addition to their present duties.²² As a result, the Committee believes HHS's current oversight plan of the Navigators and Assisters programs is woefully insufficient and will likely fail to catch waste, fraud, mismanagement and abuse.

During the briefing, HHS officials were unclear about how the department plans to oversee or enforce the requirement that Navigators or Assisters "recruit, support and promote a staff that is representative of the demographic characteristics of communities in their service area."²³ It is essential that HHS clearly define how it will enforce this requirement and indicate whether it plans to use quotas or other types of measures. During the April 18, 2013, briefing, Committee staff were told that HHS may "encourage" community organizations they have contacts with to apply for the grants.²⁴ HHS officials did not reveal what system they plan to use when soliciting these organizations,²⁵ and we are concerned that without a transparent plan, the outreach may be done in an unfair and ad hoc basis.

To assist the Committee with its oversight, we request that you produce the following documents and information, in electronic format, as soon as possible, but no later than 5:00 p.m. on May 20, 2013:

1. Documents and communications referring or relating to the funding and training of the Navigators and Assisters program, from March 23, 2010, to the present, including but not limited to:
 - a. The estimated cost of the Navigators and Assisters program in the federal exchanges and partnership exchanges;
 - b. The methodology used to arrive at the estimated cost;
 - c. The breakdown of how much funding each exchange will receive;
 - d. The specific source of funding for the Navigators and Assisters program;

²⁰ See BRIEFING, *supra* note 5.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

- e. Eligibility and selection criteria;
 - f. Conflict of interest standards;
 - g. The training program, the training standards and the certification requirements;
 - h. Privacy and security standards;
 - i. The proposed syllabus and instruction materials for applicants; and
 - j. All plans related to oversight of the Navigator and Assister organizations, as well as individual personnel at those organizations who will be providing information and outreach.
2. Documents and communications referring or relating to the statutory authority of the Secretary to implement the Assisters program, including all legal memoranda prepared by HHS officials regarding the source of funding and the creation of the program from March 23, 2010, to the present;
 3. Documents and communications between HHS officials referring or relating to grants awarded for the Navigator and Assister programs from March 23, 2010, to the present;
 4. Documents and communications between HHS employees and any employee of a non-governmental organization or entity referring or relating to the Navigator or Assister programs from March 23, 2010, to the present; and
 5. Documents and communications between HHS employees and any employee of the White House, including the Executive Office of the President, referring or relating to the Navigator or Assister programs from March 23, 2010, to the present.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

The Honorable Kathleen Sebelius

May 6, 2013

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If you have any questions about this request, please contact Brian Blase or Emily Martin of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515-6143

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Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to 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 should also 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. Requested 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 individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that 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 format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF 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 to the Committee 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.

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 this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. 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.
13. If any document responsive to this request 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.
14. If a date or other descriptive detail set forth in this request 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 request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request 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, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. 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

1. The term “document” 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, 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 call, meeting or other communication, 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.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request 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.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” 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.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.