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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 23, 2013

Mr. Michael Kapp
President
National Government Services, Inc.
8115 Knue Road
Indianapolis, IN 46250

Dear Mr. Kapp:

The Committee on Oversight and Government Reform is conducting oversight of the Obama Administration's implementation of ObamaCare and problems related to HealthCare.gov following its October 1, 2013, launch.[1] Thus far, the Department of Health and Human Services has awarded between $400 and $600 million in contracts to at least 55 entities to develop the federal exchange and the federal data services hub.[2] For this purpose, your company received at least $31 million from the Centers for Medicare and Medicaid Services.[3] The Committee seeks your company's cooperation in an effort to obtain important information about the problems plaguing HealthCare.gov, particularly given your company's participation in the development of HealthCare.gov and the federal exchange.

In June, the Government Accountability Office warned that the federal exchange and data hub had significant tasks remaining to be completed, and accordingly there was "a potential for implementation challenges going forward."[4] These tasks included the "development and testing of the information technology systems necessary for FFEs (federally facilitated exchange) to determine eligibility for enrollment into a QHP (Qualified Health Plan)."[5] At a hearing on July 17, 2013, CMS and Internal Revenue Service officials assured the Committee that the law would be ready to launch on October 1, 2013.[6] For example, Marilyn Tavenner, CMS Administrator,

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[1] Patient Protection and Affordable Care Act, PUB. LAW 111-148; HEALTH CARE AND EDUCATION RECONCILITATION ACT OF 2010.
[2] Federal contractors told this to Committee staff in a briefing on Oct. 21, 2013.
[3] *See* U.S. Gov't Accountability Office, *Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges*, GAO-13-601, (June 2013).
[4] *Id.*
[5] *Id.*
[6] *Evaluating Privacy, Security, and Fraud Concerns with ObamaCare's Information Sharing Apparatus, Joint Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and H. Comm. On Homeland Security Sucbomm. on Cybersecurity, Infrastructure Protection, and Security Technologies*, 113th Cong. 20-21 (2013)

testified, "I want to assure you that [on] October 1, 2013, the health insurance marketplace will be open for business. Consumers will be able to log onto healthcare.gov, fill out an application and find out what coverage and benefits they qualify for."[7]

Despite repeated assurances by the Obama Administration that the law would be ready by October 1, 2013, the implementation of the law has been a disaster. For example, most visitors to HealthCare.gov have been unable to create accounts and shop for coverage. Additionally, there have been many reports that insurance companies are receiving corrupt data from the exchange.[8] Even many supporters of ObamaCare have admitted that "the Affordable Care Act's launch has been a failure. Not 'troubled.' Not 'glitchy.' A failure."[9]

Based on the Committee's initial briefings from key contractors, we know that the Administration refused to heed warnings that extra time for testing was needed. Additionally, we know that CMS employees and officials repeatedly used the phrase "the White House wants" when communicating to contractors, and we know that the Administration made a decision to abandon the anonymous shopper feature close to launch.[10] Many IT experts have suggested that the decision to disable the so-called "anonymous shopping" feature contributed to the failure of HealthCare.gov on October 1, 2013, and in the weeks that have followed.[11] Media reporting has corroborated the fact that the Administration decided to launch HealthCare.gov without adequate testing. For example, on October 17, 2013, the *Washington Examiner* reported that "federal officials did not permit testing of the Obamacare healthcare.gov website or issue final system requirements until four to six days before its Oct. 1 launch" and that "[t]he root cause of the problems was a pivotal decision by Centers for Medicare and Medicaid Services officials to act as systems integrator, the central coordinator for the entire program."[12]

This lack of testing is concerning due to the amount of sensitive consumer information flowing through the data hub and exchanges. As a contractor with firsthand knowledge of the design and implementation of HealthCare.gov, we write to request your assistance with understanding the decisions that went into constructing the federal exchange and data services

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[7] *Id.*

[8] Christopher Weaver, Shira Ovide and Louise Radnofsky, *Software, Design Defects Cripple Health-Care Website*, WALL ST. J. (Oct. 6, 2013), http://online.wsj.com/news/articles/SB10001424052702304441404579119740283413018; Christopher Weaver and Louise Radnofsky, *Health Website Woes Widen as Insurers Get Wrong Data*, WALL ST. J. (Oct. 17, 2013), http://online.wsj.com/news/articles/SB10001424052702304410204579142141827109638

[9] Ezra Klein, *Five thoughts on the Obamacare disaster*, WASHINGTON POST (Oct. 14, 2013), http://www.washingtonpost.com/blogs/wonkblog/wp/2013/10/14/five-thoughts-on-the-obamacare-disaster/.

[10] Briefing by CGI Federal officials to Committee staff (Oct. 16, 2013).

[11] Carla Johnson & Richard Alonso-Zaldivar, *Questionable Design Blamed for Health Website Woes*, ASSOC. PRESS, Oct. 10, 2013, http://www.kmov.com/news/health/227263901.html.

[12] Richard Pollock, *Troubled Obamacare website wasn't tested until a week before launch*, WASH. EXAMINER, Oct. 17, 2013, http://washingtonexaminer.com/troubled-obamacare-website-wasnt-tested-until-a-week-before-launch/article/2537381.

hub. It is crucial that you provide information quickly because of the serious concerns about data security related to the lack of testing.

To assist the Committee in this matter, we request that you provide the requested documents and communications, in electronic format, as soon as possible, but no later than 5:00 p.m. on October 25, 2013:

1. A full and complete explanation of the contract type(s) and funding amount(s) awarded to your company by HHS related to ObamaCare as well as the amount of these funds disbursed to date, along with copies of the contracts and any change orders or other contract modifications;

2. All documents and communications between or among any employees, agents or subcontractors of National Government Services or any of its affiliates and any employees, agents, or contractors of the Executive Office of the President, including but not limited to the Office of Management and Budget, and employees, agents or subcontractors of HHS, including but not limited to employees in the Centers for Medicare and Medicaid Services, referring or relating to ObamaCare implementation, including but not limited to the development of HealthCare.gov or the federal data services hub, between March 23, 2010, and the present;

3. A full and complete list of all meetings referring or relating to ObamaCare, including but not limited to the development of HealthCare.gov or the federal data services hub, between National Government Services employees and employees of the executive branch of the federal government, including but not limited to employees of the Executive Office of the President and HHS, from March 23, 2010, to the present. Please include a description of these meetings, a complete list of all attendees as well as copies of any notes or formal meeting minutes recorded.

If a full and complete production cannot be made by 5:00 p.m. on October 25, 2013, please contact the Committee as soon as possible to make arrangements to voluntarily produce the documents identified above on an expedited rolling basis. If the requested documents are not produced by 5:00 p.m. on October 25, 2013, and no arrangements for a voluntary production are made, I will consider the use of compulsory process to obtain the documents.

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.

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

If you have any questions about this request or to make arrangements to produce the requested documents, please call Rich Beutel or Brian Blase of the Committee staff at (202) 225-5074. Thank you for your prompt attention to this important 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

Blake Farenthold
Chairman
Subcommittee on the Federal Workforce, U.S. Postal Service and the Census

John L. Mica
Chairman
Subcommittee on Government Operations

Jason Chaffetz
Chairman
Subcommittee on National Security

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

The Honorable Stephen F. Lynch, Ranking Minority Member
Subcommittee on the Federal Workforce, U.S. Postal Service and the Census

The Honorable Gerald E. Connolly, Ranking Minority Member
Subcommittee on Government Operations

The Honorable John F. Tierney, Ranking Minority Member
Subcommittee on National Security

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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.