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Congress of the United States

House of Representatives

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March 18, 2014

Mr. Tony Trenkle
International Business Machines Corporation
100 E. Pratt Street
Baltimore, MD 21202

Dear Mr. Trenkle:

The Committee is continuing its oversight of the Obama Administration's implementation of ObamaCare. As part of this oversight, the Committee conducted a transcribed interview with you on December 4, 2013, regarding your role in the development and launch of HealthCare.gov when you served as Chief Information Officer at the Centers for Medicare & Medicaid Services. Subsequently, the Committee interviewed numerous officials from both CMS and the Department of Health and Human Services that have shed light on your actions prior to the October 1, 2013, launch of HealthCare.gov. Based upon additional information obtained by the Committee, it appears that you were not candid and fully forthcoming with the Committee. We therefore write to ask that you make yourself available as soon as possible for another transcribed interview in order to clarify your role and actions implementing ObamaCare.

During the Committee's transcribed interview, your cooperation with the Committee's oversight efforts was underwhelming. In your testimony, you stated "I don't recall" a staggering 95 times in full or partial response to the Committee's questions. Your memory consistently failed when you were asked about the recommendations given to you about the Authority to Operate (ATO) for the federal exchanges and the security risks you had knowledge of prior to the October 1, 2013, launch of HealthCare.gov. In particular, you failed to inform the Committee about key recommendations you received about whether to authorize the ATO for the federal exchanges, about key information security risks you discussed with senior CMS officials prior to October 1, 2013, about your prominent role in allowing states to connect to the federal data services hub, and about your current employment status.

First and most unbelievable was your inability to recall the input you received from CMS Chief Information Security Officer (CISO) Teresa Fryer about proceeding with the ATO for the federal marketplace.

Q And did anybody else give you any feedback on the course of action [to] take [regarding the ATO]; Mr. Baitman, or Ms. Fryer, or Mr. Linares?

A Not that I recall.¹

Ms. Fryer testified that she had multiple conversations with you about her concerns with the ability of MITRE, the independent security tester, to adequately assess the security of the federal exchange prior to October 1, 2013.² She also testified that she recommended to you directly, on multiple occasions, that you deny the ATO for the federal exchange.³

Second, during your testimony you failed to recall key information security risks you apparently discussed with senior CMS officials prior to October 1, 2013. You testified that you briefed CMS Chief Operating Officer Michelle Snyder about the security of HealthCare.gov on or around September 23, 2013.⁴ However, you testified that you were unable to recall who was present at the briefing, and you failed to recall the substance of the briefing.⁵

Q Was one of the aspects of the briefing that one of the security risks to the marketplace was that full end-to-end testing could not occur because certain data sources were unavailable?

A I don't recall.

Q Was one part of the briefing to Ms. Snyder that one of the security risks to the marketplace on October 1st was that it was unknown how the applications would withstand attacks aimed at system availability?

A I don't believe so.

Q Was one of the aspects of the briefing to Ms. Snyder that the security testers had run into problems with accessing the system, and that they felt limited in what CMS was allowing them to do as far as security testing?

A I don't recall.

Q Was one of the aspects of the briefing that Ms. Snyder was informed that one of the security risks to the marketplace on October 1st was that code was released into production which was not complete or security tested?

A I don't recall.⁶

Subsequent to your interview, the Committee obtained a PowerPoint presentation that served as the main briefing material during the September 23, 2013, briefing.⁷ This PowerPoint

¹ Transcribed Interview with Tony Trenkle, in Wash., D.C. at 93 (Dec. 4, 2013).

² Transcribed Interview with Teresa Fryer, Chief Information Security Officer, CMS in Wash., D.C. at 161-163 (Dec. 17, 2013).

³ *Id.* at 162.

⁴ Transcribed Interview with Tony Trenkle, in Wash., D.C. at 83 (Dec. 4, 2013).

⁵ *Id.* at 86-90.

⁶ *Id.*

⁷ Marketplace Security Briefing PowerPoint, CMS, Sept. 23, 2013 (on file with author).

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presentation contains a slide that lists the very security risks for HealthCare.gov that you were asked about during your interview.⁸ Your responses to questions about the September 23, 2013, briefing are concerning given that you could not recall the important security risks that were present in HealthCare.gov in the week prior to the October 1, 2013, launch that had apparently been presented to Ms. Snyder.

Third, during your interview, you failed to describe your crucial role in authorizing state exchanges and Medicaid systems to connect to the federal data services hub. The data hub routes information provided by individuals applying for coverage through the exchanges by passing information from federal agencies, such as IRS and the Social Security Administration, to the exchanges and state Medicaid systems.⁹

The Committee has learned that, as of the last week of September 2013, most state systems had not completed formal testing, CMS contractors had not conducted necessary site visits, reviews of security documentation had not been completed, and weaknesses were not well known.¹⁰ The Committee has also learned that after the CMS CISO's office reviewed state ATC documentation and testing, the CISO only recommended four state systems be allowed to connect to the hub.¹¹

Ryan Brewer, CMS's Chief Information Security Officer (CISO) from 2009 through 2011 and currently an advisor to CMS on information security matters, offered the following assessment: "Allowing these states to connect to the Hub and FFM [Federally Facilitated Marketplace] without the appropriate review of their documentation introduces an unknown amount of risk to the Hub and FFM. **This in turn puts the PII of potentially millions of users at risk of identity theft and fraud to the CMS marketplace healthcare subsidy program.**"¹² [emphasis added]

In response to a September 29, 2013, email from Mike Mellor, CMS Deputy CISO, about an ATC "signing party,"¹³ Ms. Fryer wrote, "normally I just review and sign what Ryan [Brewer] gives me anyway because **the front office is signing them whether or not they are a high risk.**"¹⁴ [emphasis added] At the time, CMS's front office consisted of you, CMS's Deputy Chief Information Officer Henry Chao, and CMS's Chief Technology Officer George Linares.¹⁵

⁸ Transcribed Interview with Teresa Fryer, Chief Information Security Officer, CMS in Wash., D.C. at 148 (Dec. 17, 2013).

⁹ 78 Fed. Reg. 8,538 (Feb. 6, 2013).

¹⁰ Marketplace Security Briefing PowerPoint, CMS, Sept. 23, 2013 (on file with author).

¹¹ CISO Reviewer Overall Comments & Recommendations, CMS (stating the recommendation of the CISO reviewer to approve state connections to the DSH) (on file with author).

¹² E-mail from C. Ryan Brewer, Principal, GrayScout, LLC, to Teresa M. Fryer, CISO, CMS (Sept. 18, 2013, 2:17 PM) (on file with author).

¹³ E-Mail from Michael Mellor, Deputy CISO, CMS, to Teresa M. Fryer, CISO, CMS (Sept. 29, 2013, 7:02 AM) (on file with author).

¹⁴ E-mail from Teresa M. Fryer, CISO, CMS, to C. Ryan Brewer, Principal, GrayScout, LLC, and Michael Mellor, Deputy CISO, CMS (Sept. 29, 2013, 8:15:55 AM) (on file with Committee staff).

¹⁵ Transcribed Interview with Thomas Schankweiler, Information Security Officer, Centers for Medicare and Medicaid Services, in Wash. D.C. at 36 (Dec. 17, 2013).

According to this information, you were intimately involved in the process to allow states to connect to the data services hub. On September 23, 2013, you briefed Ms. Snyder about the high risk of allowing states to connect despite the lack of security testing.¹⁶ It also appears that you elevated the decision to Administrator Tavenner to allow nine states to connect to the hub despite not having enough time to review the required documentation. Despite your direct involvement in CMS's decision to allow poorly tested and potentially insecure state systems to connect to the federal data services hub, you failed to inform the Committee that this was one of your primary responsibilities regarding CMS's implementation of ObamaCare.

Finally, during your interview you refused to answer several questions. For example, you would not answer important questions regarding your current employment after leaving CMS on November 15, 2013:

Q ... Mr. Trenkle, what is your current position?

A I am not -- I'm not -- I left CMS on November 15th.

Q Have you transitioned to any other employment?

A I don't think that's relevant to this.

Q Could you just answer yes or no, whether you have?

A No. I'm not going to answer.¹⁷

Despite your refusal to answer questions about your current employment, the Committee has learned that you secured employment with the International Business Machines Corporation after leaving CMS. IBM has many contracts with CMS and HHS as well as other federal agencies.¹⁸ Your refusal to answer these questions is a concern to the Committee and appears to be an attempt to prevent the Committee from learning about your involvement in ongoing federal projects. As such, understanding the nature of your current employment at IBM is necessary to the Committee's ongoing oversight of HealthCare.gov.

Your inability to recall basic information regarding your knowledge of the security risks of HealthCare.gov and your refusal to answer questions posed by the Committee is very troubling. Furthermore, the September 23, 2013, Security Briefing PowerPoint obtained by the Committee shows that you may have made decisions about allowing states to connect to the Federal Data Service Hub that created additional security risks for millions of Americans. With this in mind, we write to request that you correct the record by making yourself available for a transcribed interview with the Committee.

¹⁶ Marketplace Security Briefing PowerPoint, CMS, Sept. 23, 2013 (on file with author).

¹⁷ Transcribed Interview of Tony Trenkle, in Wash. D.C. at 6.

¹⁸ Nicole Blake Johnson, *CMS Awards \$15 Billion Data Management Contract*, Federal Times, available at <http://www.federaltimes.com/article/20121120/IT03/311200003/>.

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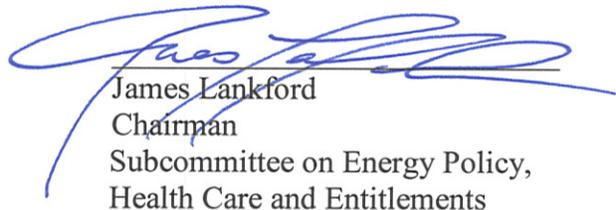
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Please contact the Committee no later than March 21, 2014, to schedule your transcribed interview. If you have any questions about this request, please contact the Committee at (202) 225-5074. Thank you for your attention to this important matter.

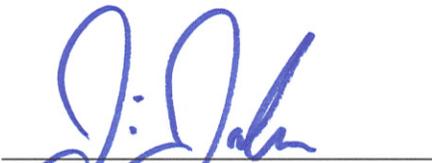
Sincerely,



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



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 Matt Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs