



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

December 12, 2013

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Investigation  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

We write in further response to the Committee's demand for unredacted copies of sensitive security testing documents prepared by the MITRE Corporation (MITRE), in connection with Healthcare.gov. As we have explained through staff discussions and in our prior correspondence, these documents are highly sensitive in light of the substantial harm that could result if the information contained in them were accessed by determined actors seeking to compromise the security and functioning of the website. To be clear, this is not a question of whether the Department of Health and Human Services (HHS) will share this information with the Committee – we have already done so and will continue to make the documents available for your review. Rather, it is a question of whether the Committee will work with us to ensure the sensitive information contained in these documents is adequately protected. The Committee's ongoing efforts to compel MITRE's production of this material, including the use of compulsory process, risks jeopardizing the integrity of the agency's information technology (IT) systems, as well as those of our public and private partners.

We have already made substantial efforts to accommodate the Committee's interest in the security of the Healthcare.gov platform, consistent with our obligation to ensure the security of the Federally-facilitated Marketplace (FFM). On Friday, December 6, we permitted Committee staff to review unredacted copies of all of the requested Security Control Assessments (SCAs) prepared by MITRE, in camera, and to take notes that would remain in a secure location. Further, in our letter to the Committee on December 9, we offered to make the unredacted SCAs available for the Committee's continued review at times convenient for Members and staff. Consequently, Committee staff has had the opportunity to see all of the security information at issue without redaction and are free to review these documents against whenever they would like. The Department offered these accommodations to provide the Committee with the requested information in a manner that minimizes the risk of a public disclosure that would allow a malicious cyber actor using it to undermine the security of the Healthcare.gov website and the IT systems to which it connects.

We remain willing to discuss additional accommodations to satisfy your oversight interest in this material. Regrettably, your subpoena to MITRE for the unredacted SCAs has a return date of noon tomorrow, leaving an impossibly narrow window for our staffs to engage in a productive dialogue. Nonetheless, we are willing to discuss further

accommodations, such as providing the documents in a secure reading room at the Committee's offices, which would be open to all Committee Members and staff during business hours until the Committee completes its review. The Committee could also be permitted to invite an independent security expert (or experts) to examine the unredacted SCAs *in camera*. To the extent Committee staff would like to use the documents during interviews with agency officials, we could discuss making the unredacted SCAs available for that purpose, with an agreement regarding appropriate handling of those sections of the resulting transcript. In addition, the Department's cyber-security experts are available to brief Committee staff on the unredacted SCAs, and to explain with particularity the security risks were this information to become available to potential hackers and other malicious cyber actors. We are available to entertain other proposals from the Committee and to expeditiously work out the details of a mutually agreeable arrangement.

The security testing documents at issue – like those for any federally operated information technology system – contain a systematic and detailed assessment of potential vulnerabilities in the cyber defenses that guard the various components of Healthcare.gov. These types of systematic reviews are undertaken in connection with every government website in order to comply with the Federal Information Security Management Act (FISMA). The results of reviews such as MITRE's are sensitive because they offer a blueprint for potential attacks – specifically on the FFM in this case, but also more broadly on any similarly constructed Federal IT systems. Guided by the detailed information and analyses provided in MITRE's reports, malicious cyber actors would become more efficient and more likely to be effective in disrupting and debilitating those systems. They would also become better armed to gain unauthorized access to the systems, compromise their contents, clandestinely monitor or control system components, or exfiltrate sensitive data for unlawful purposes. Even after the particular vulnerabilities have been effectively remediated or mitigated, the detailed information contained in these documents could be misused by those with the necessary technical expertise to develop targeted and effective intrusion strategies. Moreover, the information in the SCAs could include a variety of computer security related information that may not appear to be sensitive by itself, but could be sensitive when aggregated with other information; or seemingly innocuous information that may jeopardize national security, such as site locations or emergency contact information.

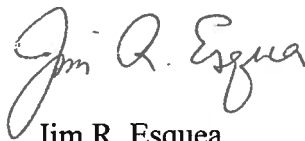
You have suggested that the Department's concerns in producing the requested documents are rooted in a reluctance to disclose the current status of specific security risks that MITRE identified. But, as noted above, we have already shared and will continue to share the unredacted SCAs with the Congress in a manner that does not create new or additional threats to our system.

As you are aware, MITRE shares our assessment regarding the risks from public disclosure of these documents and has warned, most recently in its letter of December 4, 2013, that the information they contain "could be used to hack the system . . . and may pose a risk to the confidentiality of consumer information accessible through Healthcare.gov if disclosed." However, if you do not accept MITRE's or our assessment of the risks from disclosure of these documents, we will make them available, with appropriate parameters governing use of the material, for other independent security experts to judge the potential impact.

The Committee's unwillingness to commit to undertake measures to address the security risks associated with further disclosure is troubling, particularly in light of reports that sensitive materials were disclosed through various investigations. We are cognizant of your position that the Committee will not recognize classification of documents as "sensitive," or even "confidential," and reports of your statement last fall that "[a]nything below Secret is in fact just a name on a piece of paper." As the agency charged with administering the IT systems associated with Healthcare.gov, HHS is responsible for protecting those systems and the millions of Americans who rightly trust they are secure. We are committed to working with you to find an appropriate accommodation that honors that responsibility.

We recognize that the Committee shares our interest in safeguarding Federal IT systems. In light of the serious risks posed by further disclosure of the unredacted SCAs, we ask that the Committee extend the deadline for its subpoena to MITRE, to allow additional time for our respective staffs to continue to explore alternatives that would satisfy your interest in the security of the FFM, consistent with our joint commitment to preserving the integrity of that system.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jim R. Esquea". The signature is fluid and cursive, with the first name "Jim" and last name "Esquea" clearly distinguishable.

Jim R. Esquea  
Assistant Secretary for Legislation

cc: The Honorable Elijah Cummings  
Ranking Member