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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

December 11, 2013

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

Dear Madam Secretary:

The Committee is conducting oversight of the Obama Administration's implementation of the Affordable Care Act, commonly referred to as ObamaCare. Pursuant to the Committee's oversight I requested relevant documents from several companies that contracted with the Department of Health and Human Services for work related to the HealthCare.gov website. The Department subsequently instructed those companies not to comply with the Committee's request. The Department's hostility toward questions from Congress and the media about the implementation of ObamaCare is well known.¹ The Department's most recent effort to stonewall, however, has morphed from mere obstinacy into criminal obstruction of a congressional investigation.

In a December 6, 2013, letter to Creative Computing Solutions, Inc. (CCSI), the Department claimed that the company is contractually precluded from producing documents to Congress. The letter further stated that the Department will respond to requests from Congress on the company's behalf. It is my understanding that CCSI was not the only contractor to receive a letter like this. The letter to CCSI stated that the company is:

¹ See, e.g., Julie Pace, *AP Sources: 476,000 ObamaCare applications filed*, Assoc. Press, Oct. 19, 2013, ("[Administration] officials continue to refuse to say how many people have actually enrolled in the insurance markets."); *Id.* ("[T]he Obama administration has yet to fully explain what went wrong with the online system consumers were supposed to use to sign up for coverage."); Fred Lucas, *HHS Not Responsive to Congressional Inquiry About Contractors and ObamaCare data*, CNS News, Jan. 9, 2013, ("Congress is scrutinizing the private firms hired to implement parts of Obamacare, -- particularly a subsidiary of insurance firm UnitedHealth Group, which will hold the customer data for health care plans in the exchanges required under the law -- but the Department of Health and Human Services (HHS) has been less than forthcoming . . .").

[N]ot authorized to disclose to third parties information collected or maintained by or on behalf of a federal agency, including information collected, or information produced during security testing.

* * *

If you receive a request for this information from Congress, CMS will respond directly to the requestor and will work with the requestor to address its interests in this information.²

The Department's instruction not to cooperate with congressional investigators relies on language in the contract with CCSI which precludes contractors from sharing certain data with third parties.³ Moreover, the Department explicitly forbids the release of documents without authorization from CMS.⁴ That argument—that the language in the contract between the Department and a private company supersedes Congress' constitutional prerogative to conduct oversight—is without merit. In fact, it strains credulity to such an extent that it creates the appearance that the Department is using the threat of litigation to deter private companies from cooperating with Congress.

The Department's attempt to threaten CCSI for the purpose of deterring the company from providing documents to Congress places the officials responsible for drafting and sending the letter on the wrong side of federal statutes that prohibit obstruction of a congressional investigation. Obstructing a Congressional investigation is a crime. Section 1505 of Title 18 of the U.S. Code states, in pertinent part:

Whoever corruptly, or by threats or force, or **by any threatening letter or communication** influences, obstructs, or impedes or **endeavors to influence, obstruct, or impede** the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or **the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress,** shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.⁵

² Letter from Daniel Kane, Director, Office of Acquisition and Grants Management, Centers for Medicare and Medicaid Services, to Maggie Bauer, Senior Vice President of Health Services, Creative Computing Solutions, Inc. (Dec. 6, 2013).

³ *Id.*

⁴ *Id.*

⁵ 18 U.S.C. § 1505. (emphasis added)

The federal obstruction laws reflect the fact that Congress' right of access to information is constitutionally based and critical to the integrity and effectiveness of our oversight and investigative activities. For that reason, it is widely understood that private citizens and companies cannot contract away their duty to comply with a congressional request for documents.

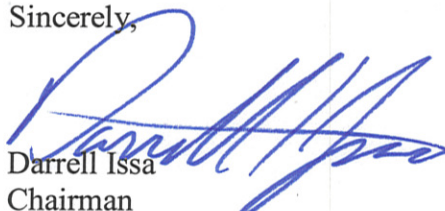
Furthermore, the Department's instruction to CCSI and other contractors not to respond to congressional document requests runs afoul of a federal statute that prohibits interfering with an employees' right to furnish information to Congress. Under that statute, any effort to enforce a contract that prevents a federal employee -- or in this case, a contractor -- from communicating with Congress is unlawful.⁶

The Committee takes any effort to obstruct or otherwise interfere with its investigations very seriously. I request that you direct all employees in your Department to cease obstructing the Committee's investigation of the implementation of the ACA through HealthCare.gov. It is my expectation that you and your staff will have no further communication with the contractors in question regarding the Committee's requests for documents and information. I remind you that an October 30, 2013, subpoena issued to you -- which remains in effect -- would capture the information that I requested from contractors.

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.

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

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

⁶ 5 U.S.C. § 7211 states: The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.