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House of Representatives

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March 25, 2014

The Honorable Edmund G. Brown
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

Dear Governor Brown:

Over the past four years, the Committee on Oversight and Government Reform has been conducting oversight of the Obama Administration's implementation of ObamaCare. We are writing to you because the Committee has learned that the Obama Administration took actions in the summer and fall of 2013 that appear to have placed the private information of Californians at risk with the launch of ObamaCare's health insurance exchanges. We write to provide you with information pertinent to the citizens of your state as well as to request your assistance with the Committee's ongoing oversight.

Independent Security Assessment of California's Exchange Raised Security Concerns

Since October 1, 2013, Americans in states with exchanges established by the federal government have been entering their personally identifiable information (PII), such as birth dates, Social Security numbers, and income as well as PII of family members into HealthCare.gov. Individuals in states that established state health insurance exchanges, including California, have likewise been entering this information into similar websites. Federal agencies, including the Internal Revenue Service and the Social Security Administration, have responsibility for verifying much of the information provided by individuals applying for coverage through the exchanges. The information provided by these agencies passes through the federal data services hub to the ObamaCare exchanges, where the information is then stored.¹

California contracted with Performance Technology Partners (PTP) to conduct an independent security assessment of its exchange as required by the Centers for Medicare and

¹ Department of Health and Human Services, Office of Inspector General, Observations Noted During the OIG Review of CMS's Implementation of the Health Insurance Exchange—Data Services Hub (Aug. 2013), <https://oig.hhs.gov/oas/reports/region1/181330070.pdf>.

Medicaid Services (CMS) Minimum Acceptable Risk Standards for Exchanges (MARS-E).² PTP conducted this assessment from August 16, 2013 to August 30, 2013.³ PTP issued its independent security assessment report on August 30, 2013, just one month prior to the launch of the California exchange.⁴

PTP's assessment raises serious questions about the security of the California exchange when it launched on October 1, 2013. In the report, PTP identified thousands of security weaknesses in the California exchange.⁵ Among these weaknesses, 1,135 were deemed "High Risk Level" findings and 10,152 were deemed "Moderate Risk Level" findings.⁶ The National Institute of Standards and Technology (NIST) defines a moderate risk as a risk where "the loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals"⁷ and a high risk as a risk where "the loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals."⁸

Overall, PTP identified 11,610 weaknesses with California's exchange.⁹ Moreover, an automated security scan found a total of 21,777 vulnerabilities with an average security risk rating of 4.0 out of 5.0.¹⁰ The risk ratings were measured in terms of severity of the risk or

² Centers for Medicare and Medicaid Services, Catalog of Minimum Acceptable Risk Controls for Exchanges . . . Exchange Reference Architecture Supplement 42-44 (Aug. 1, 2010), *available at*: <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Catalog-of-MinAcceptable-Risk-Controls-for-Exchanges-ERA-Supp-v-1-0-08012012-a.pdf>.

³ See Performance Technology Partners, California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS) Security Assessment Rep. (SAR) Version 1.0, at 3 (Aug. 30, 2013).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See U.S. Dep't of Commerce, Federal Information Process Standards Publication, Standards for Security Categorization of Federal Information and Information Systems, FIPS PUB 199, at 2 (Feb. 2004) (hereinafter "FIPS PUB 199"). According to NIST, a serious adverse effect means that, for example, the loss of confidentiality, integrity or availability might: (i) cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced; (ii) result in significant damage to organizational assets; (iii) result in significant financial loss; or (iv) result in significant harm to individuals that does not involve loss or life or serious life threatening injuries.

⁸ *Id.* at 3. According to NIST, a severe or catastrophic adverse effect means that, for example, the loss of confidentiality, integrity, or availability might: (i) cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions; (ii) result in major damage to organizational assets; (iii) result in major financial loss; or (iv) result in severe or catastrophic harm to individuals involving loss of life or serious life threatening injuries.

⁹ Performance Technology Partners, California Healthcare Eligibility, Enrollment, and Retention System (CalHEERS) Security Assessment Rep. (SAR) Version 1.0, at 7 (Aug. 30, 2013).

¹⁰ *Id.* at Appendix A. The 21,777 vulnerabilities identified encompasses the 11,610 confirmed weaknesses in California's exchange and also includes the number of potential weaknesses identified by the automated scan as well

potential risk, with 1.0 being the lowest and 5.0 being the highest.¹¹ It is unclear when, if at all, the numerous deficiencies in the security of California's exchange were corrected.

Obama Administration Allowed California to Connect to Federal Data Hub Despite High Risks

The Committee has recently obtained the security risk assessment of the Chief Information Security Officer (CISO) at CMS for allowing states to connect to the data services hub. State exchanges and Medicaid systems needed authority to connect (ATC) agreements from CMS in order to connect to the federal data services hub.

After its review, the CISO only recommended four state systems be allowed to connect to the hub. According to the reviews, the CISO deemed 35 state systems as a high risk and an additional ten state systems as a moderate risk of connecting to the data hub.¹²

Despite the CISO's negative assessments that generally revealed incomplete documentation and inadequate security testing, CMS allowed most of these states to connect to the federal data hub on October 1, 2013. A few days prior to October 1, 2013, Ryan Brewer, CMS's CISO from 2009 through 2011 and currently an advisor to CMS on information security matters, offered the following assessment to current CMS CISO Teresa Fryer: "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.**"¹³ [emphasis added]

It does not appear, however, such concerns were welcomed by senior CMS management in the days leading up to the October 1, 2013, launch date. In response to a September 29, 2013, E-mail from Mike Mellor, CMS Deputy CISO, about an ATC "signing party,"¹⁴ 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.**"¹⁵ [emphasis added] At the time, CMS's front office consisted of CMS's Chief Information Officer Tony Trenkle, CMS's Deputy

as vulnerabilities where information was merely gathered but the vulnerability was not confirmed or was not identified as a potential weakness.

¹¹ *Id.*

¹² CMS CISO Reviewer Overall Comments & Recommendations.

¹³ E-mail from C. Ryan Brewer, Principal, GrayScout, LLC, to Teresa M. Fryer, CISO, CMS (Sept. 18, 2013, 2:17 PM) (on file with Committee staff).

¹⁴ E-Mail from Michael Mellor, Deputy CISO, CMS, to Teresa M. Fryer, CISO, CMS (Sept. 29, 2013, 7:02 AM) (on file with Committee staff).

¹⁵ 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).

Chief Information Officer Henry Chao, and CMS's Chief Technology Officer George Linares.¹⁶ Ms. Fryer testified that by authorizing states to connect to the data hub CMS accepted "a risk, again, of the unknowns, because things haven't been tested."¹⁷

On September 25, 2013, CMS's CISO completed its assessment of California's ATC package.¹⁸ According to a review of security documentation submitted by California, the CISO concluded that there was a moderate risk if CMS allowed California's exchange to connect to the data hub.¹⁹ Despite the risk, CMS allowed California's exchange to connect to the data hub on October 1, 2013.

Due to the decision of the Obama Administration to launch the exchanges on October 1, 2013, before states could properly test their systems and government security experts could properly review security documentation and address known problems, the personal information of millions of Americans who have sought to obtain coverage through the exchanges was put at risk. As the Committee continues its oversight of ObamaCare, we request that you provide the following information to the Committee by April 8, 2014.

- 1) All documents and communications between any employees, contractors, or agents of the State of California and any employees, contractors, or agents of the U.S. Department of Health and Human Services, including but not limited to any employees, contractors, or agents of the Centers for Medicare and Medicaid Services, referring or relating to the California exchange or the federal data services hub between May 1, 2013, and the present.
- 2) All documents and communications between any employees, contractors, or agents of the State of California and any employees, contractors, or agents of the White House, including but not limited to the Executive Office of the President, referring or relating to the California exchange or the federal data services hub between May 1, 2013, and the present.
- 3) All assessments or audits of the California exchange's development, readiness, or security between July 1, 2012, and the present.

¹⁶ Transcribed Interview with Thomas Schankweiler, Information Security Officer, Centers for Medicare and Medicaid Services, in Wash. D.C. (Dec. 17, 2013).

¹⁷ Transcribed Interview with Teresa Fryer, Chief Information Security Officer, Centers for Medicare and Medicaid Services, in Wash. D.C. (Dec. 17, 2013).

¹⁸ CISO Reviewer Overall Comments and Recommendations of the California Healthcare Eligibility Enrollment and Retention System ATC (Sept. 25, 2013).

¹⁹ *Id.*

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March 25, 2014
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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. If you have any questions about this request, please contact Brian Blase or Meinan Goto of the Committee staff at (202) 225-5074. Thank you for your attention to this important matter.

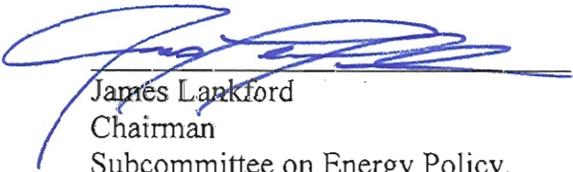
Sincerely,



Darrell Issa
Chairman



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



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

Enclosure

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

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

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