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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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April 17, 2014

Ms. Kathryn Ruemmler  
Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Ms. Ruemmler:

The Committee on Oversight and Government Reform has been conducting oversight of the implementation of ObamaCare. As part of that larger effort, the Committee is examining the numerous problems with ObamaCare's health insurance exchanges. In particular, the Committee is investigating the design, implementation, testing, and rollout of the health insurance exchange website HealthCare.gov. The consequences of the decision to launch the exchanges on October 1, 2013, without adequate performance or security testing caused millions of Americans unnecessary frustration and delays and also exposed these individuals to a serious risk of identity theft, data modification, and malicious attacks on their personal computers. It has come to the Committee's attention that the White House's involvement in developing the online exchange—self-described as minimal—is greater than previously known. For this reason, I am writing to request additional information.

### ***Background***

On October 10, 2013, Senator Lamar Alexander and I wrote to Health and Human Services Secretary Kathleen Sebelius requesting information related to the widely-reported problems with the exchanges.<sup>1</sup> After the Department's initial refusal to provide information responsive to our request, Senator Alexander and I sent a follow-up letter to Secretary Sebelius on October 24, 2013.<sup>2</sup> Because the Department persisted in its refusal to cooperate voluntarily with several of the Committee's requests, I had no alternative but to issue a subpoena to Secretary Sebelius on October 30, 2013, to compel the production of relevant documents.

<sup>1</sup> Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (OGR), & Hon. Lamar Alexander, Ranking Member, S. Comm. on Health, Education, Labor and Pensions (HELP), to Hon. Kathleen Sebelius, Sec'y, U.S. Dep't of Health & Human Servs. (HHS) (Oct. 10, 2013).

<sup>2</sup> Letter from Hon. Darrell Issa, Chairman, OGR, & Hon. Lamar Alexander, Ranking Member, HELP, to Hon. Kathleen Sebelius, Sec'y, HHS (Oct. 24, 2013).

The Department made a partial production of documents responsive to the subpoena on February 25, 2014. In a cover letter accompanying this production, the Department stated, “During the course of our review of potentially responsive records, we discovered a number of documents that raised executive branch institutional interests that are not HHS’s alone.”<sup>3</sup> The same day, Committee staff met with representatives of your office to discuss the White House’s role in the Department’s response to the Committee’s subpoena. During that meeting, your staff communicated that the White House does in fact have equities in certain documents covered by the subpoena, and that those documents were being withheld from the Committee for further White House review. The apparent purpose of this equity review is to give the White House the opportunity to apply redactions or to instruct HHS to withhold documents that are responsive to the Committee’s subpoena in full or in part.

The Department subsequently produced 3,181 pages to the Committee on March 14, 2014, and another 4,996 pages on April 7, 2014. According to the Department, the additional productions contained documents redacted to protect unspecified “longstanding Executive Branch institutional interests,” as well as documents redacted for purported “security purposes.”<sup>4</sup> The productions did not provide any further details as to the reasons for specific redactions.

***The President stated that the White House’s involvement in designing and activating HealthCare.gov was minimal.***

The White House’s involvement in the Department’s response to the Committee’s subpoena was unexpected. The President has been adamant that he and other senior Administration officials did not have a significant role in the rollout of HealthCare.gov. Indeed, the President has often directed criticism related to the rollout toward HHS technical staff and contractors. For example, in an interview with NBC News on November 7, 2013, the President stated that “Kathleen Sebelius doesn’t write code, she wasn’t our IT person.”<sup>5</sup> Also, during a November 14, 2013, press conference, the President stated, “On the website, I was not informed directly that the website would not be working the way it was supposed to.”<sup>6</sup> If these statements are true, the Department’s delay in responding to the Committee’s subpoena to allow the White House to review certain documents seems unnecessary.

These prior statements notwithstanding, senior White House officials—as well as the President—appear to have been far more personally involved in decision-making related to HealthCare.gov than the White House previously represented. Documents obtained by the Committee show the significant involvement of senior White House officials in the rollout of

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<sup>3</sup> Letter from Jim R. Esquea, Ass’t Sec’y for Legislation, HHS, to Hon. Darrell Issa, Chairman, OGR (Feb. 25, 2014), at 2.

<sup>4</sup> Letter from Jim R. Esquea, Ass’t Sec’y for Legislation, HHS, to Hon. Darrell Issa, Chairman, OGR (Mar. 14, 2014), at 2.; Letter from Jim R. Esquea, Ass’t Sec’y for Legislation, HHS, to Hon. Darrell Issa, Chairman, OGR (Apr. 7, 2014), at 1.

<sup>5</sup> *Exclusive: Obama Personally Apologizes For Americans Losing Health Coverage*, NBC NEWS, Nov. 7, 2013, <http://www.nbcnews.com/news/us-news/exclusive-obama-personally-apologizes-americans-losing-health-coverage-v21352724>.

<sup>6</sup> The White House, Office of the Press Sec’y, Stmt. by the President on the Affordable Care Act (Nov. 14, 2013), <http://www.whitehouse.gov/the-press-office/2013/11/14/statement-president-affordable-care-act>.

HealthCare.gov. Their involvement, as well as documents that show reports were being produced for the President, suggest that the President was more involved with matters related to the status of the federal marketplace prior to October 1, 2013, than previously known.

***Documents show the White House was in fact involved in developing and activating Healthcare.gov.***

Documents obtained by the Committee show that Steven Van Roekel, Chief Information Officer of the United States, and Todd Park, Chief Technology Officer of the United States, received briefings “with respect to Marketplace IT dev[elopement] and testing” in April 2013 and again in July 2013.<sup>7</sup> Other documents obtained by the Committee show that White House officials received briefings “every other week” as early as July 2013—three months before the launch date.<sup>8</sup>

E-mail correspondence from August 2013 among officials at the Centers for Medicare and Medicaid Services (CMS), including Chief Information Officer Tony Trenkle and Chief Information Security Officer Teresa Fryer, states that “the White House is concerned we are not ‘certifying’ the system until the last minute and therefore might mean the systems might not be ‘ready’ until the very last minute.”<sup>9</sup> It appears that this White House concern spurred CMS to authorize the Authority to Operate (ATO) for the federal data services hub much earlier than planned. In fact, CMS certified the data services hub 17 days before the preliminary security control assessment report was delivered to CMS for review.

Moreover, senior White House officials made a “close hold request” in late August 2013 “for CMS to develop a memo that outlines the ACA Marketplace (go live Oct 1) cyber protection strategy that includes: Defenses, Threat assessment, Response strategy.”<sup>10</sup> The document was intended to be an “[i]nternal memo for White House senior leadership (will be used as talking points for congressional staff meetings, press conferences, etc).”<sup>11</sup> A September 2013 e-mail exchange among CMS officials describes a memorandum entitled “Marketplace Cyber Protection Strategy,” as “the WH memo.”<sup>12</sup> During the preparation of this document, senior CMS and HHS officials were aware of and were responding to concerns raised by Mr. Park and Ed Siskel, Deputy White House Counsel and Deputy Assistant to the President.<sup>13</sup> Moreover, according to an e-mail from Mr. Park to Mr. Trenkle, Chris Jennings, Deputy Assistant to President Obama for Health Policy and Coordinator of Health Reform, offered input into HealthCare.gov’s cyber-security plan and related public messaging.<sup>14</sup>

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<sup>7</sup> E-mail from Jeannette Pleines, CMS, to Tony Trenkle, CMS, and Henry Chao, CMS (Apr. 11, 2013) [HHS-0110303-307]; E-mail from Vivian Graubard, White House, to Todd Park, White House, and Henry Chao, CMS (June 28, 2013) [HHS-0106968-969].

<sup>8</sup> E-mail from Julie G. Franklin, HHS, to April M. Strathy, HHS, et al. (July 16, 2013) [HHS-0104578-588].

<sup>9</sup> E-mail from Tony Trenkle, CMS, to George E. Linares, CMS, et al. (Aug. 8, 2013) [HHS-0103274-277].

<sup>10</sup> E-mail from Michael Mellor, CMS, to Tony Trenkle, CMS, et al. (Sep. 3, 2013) [HHS-0105332-337].

<sup>11</sup> *Id.*

<sup>12</sup> E-mail from Teresa M. Fryer, CMS, to Tony Trenkle, CMS, et al. (Sep. 5, 2013) [HHS0105580-594].

<sup>13</sup> E-mail from Tony Trenkle, CMS, to George E. Linares, CMS, et al. (Aug. 8, 2013) [HHS-0105223-227].

<sup>14</sup> E-mail from Tony Trenkle, CMS, to Todd Park, White House (Sep. 4, 2013) [HHS0105223-227].

The White House also directed CMS to enlist the help of an external validator of the Marketplace's security capabilities. On September 4, 2013, Ms. Fryer wrote to senior employees of the MITRE Corporation that CMS wanted MITRE to assume the task of an external validator "as a follow-on to White House inquiries regarding CMS' preparedness in defending against cyber-attacks when [the] Marketplace comes online October 1st."<sup>15</sup> Mr. Trenkle also wrote to senior MITRE employees that day, stating "This exercise is [a] very close hold."<sup>16</sup> Other documents also show that website development and testing personnel were finalizing a document entitled "POTUS report" in early September 2013, well in advance of the launch date.<sup>17</sup>

The internal White House memo, entitled "Marketplace Cyber Security Strategy," and MITRE's review of the security strategy raise serious questions about what the Administration knew about both the status of the development of HealthCare.gov and the state of security testing. The White House memo describes risks CMS was tracking, including "Application Development Delays [HIGH]," "Tight Schedule [HIGH]," and "Lack of Configuration [MODERATE]."<sup>18</sup> According to the memo, "The Federally-Facilitated Marketplace (FFM) system SCA has already been moved once due to system readiness issues. There is a risk that the FFM system will not be ready for the September 16, 2013, SCA. There is no room for rescheduling the SCA and still making the October 1, 2013, go-live date."<sup>19</sup> Moreover, the document also references "rapid system development, configuration, and deployment [that] could result in high-risk findings that cannot be remediated by the time the ATO is required."<sup>20</sup>

In addition to the numerous White House requests discussed above, the White House also requested that CMS prepare talking points related to the security of the federal exchange. On August 23, 2013, Mr. Park emailed Michelle Snyder, CMS's Chief Operating Officer, Marilyn Tavenner, CMS's Administrator, and Mr. Trenkle stating that "Marilyn [Tavenner]/WH folks would love to get three basic bullet points describing how we will protect the Marketplace from cyberattack."<sup>21</sup> Mr. Park's e-mail included three initial bullet points. Mr. Trenkle forwarded Mr. Park's e-mail to Ms. Fryer and other CMS security experts and wrote:

[O]bviously need to be careful about how to respond. I am very concerned about #3 [The information technology systems that are being created for the Marketplace meet or exceed existing government standards. In addition, HHS is working with States, IRS, DOJ and the FTC on a comprehensive plan to identify, prevent, detect, and prosecute

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<sup>15</sup> E-mail from Teresa Fryer, CMS, to Allen Krotman & Robert Jensen, MITRE Corp. (Sep. 4, 2013) [HHS0105576-78].

<sup>16</sup> E-mail from Tony Trenkle, CMS, to Allen Krotman & Robert Jensen, MITRE Corp. (Sep. 4, 2013) [HHS0105576-78].

<sup>17</sup> E-mail from Marc Samuels, Booz Allen Hamilton, to Todd Coutts, CMS, et al. (Sep. 6, 2013) [HHS-0103328-337].

<sup>18</sup> Centers for Medicare & Medicaid Services Enterprise Information Security Group, *Marketplace Cyber Protection Strategy* (Sep. 6, 2013).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> E-mail from Terris King, CMS, to Tony Trenkle, CMS (Aug. 23, 2013) [HHS-0110780-781].

identity theft and fraud.]. Also we probably should make sure that Frank Baitman is aware of this request.<sup>22</sup>

A September 3, 2013, e-mail from Mr. Baitman, HHS's Chief Information Officer, to HHS Deputy Secretary Bill Corr, shows that he became involved with this White House request.<sup>23</sup> This e-mail, produced by HHS on February 4, 2014, related to talking points drafted by Department officials regarding the information security of the federal exchange.<sup>24</sup> In the e-mail, Baitman wrote, "[t]here are issues with security that I'm learning about which cause me concern."<sup>25</sup>

***The White House applied redactions to documents that are responsive to the subpoena for HealthCare.gov documents.***

The Department had initially withheld the e-mail, which eventually was partially produced in redacted form, from a prior production of documents responsive to the subpoena. According to the Department, a portion of this e-mail and the attached list of talking points were not previously produced because the document "raised important Executive Branch institutional concerns that extend beyond HHS and CMS."<sup>26</sup>

During a meeting between our staffs, representatives of your office stated that the White House did in fact apply redactions to the Baitman e-mail. They were unwilling to provide further details about the redactions. The March 14, 2014, production contained additional parts of the aforementioned September 3, 2013, e-mail chain.<sup>27</sup> This e-mail exchange shows the significant involvement of White House officials with issues relating to the security of HealthCare.gov. In particular, it appears that White House officials were asking CMS officials and HHS officials how to validate the security of the online marketplace. The e-mail exchange, which includes Tara McGuinness, White House Senior Communications Adviser, and Jeanne Lambrew, Deputy Director of the White House Office of Health Reform, in addition to Mr. Jennings, Mr. Siskel, and Mr. Park, contains redactions that are far more extensive than the "limited redactions" that the Department described in its March 14, 2014, letter. The subpoena I authorized requires the Department to produce responsive documents in unredacted form—absent a valid assertion of a constitutional privilege.

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<sup>22</sup> *Id.*

<sup>23</sup> E-mail from Frank Baitman, Chief Information Officer, HHS, to Bill Corr, Deputy Sec., HHS (Sep. 3, 2013).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Letter from Jim R. Esquea, Ass't Sec'y for Legislation, HHS, to Hon. Darrell Issa, Chairman, OGR (Feb. 4, 2014), at 1.

<sup>27</sup> See e-mail from Todd Park, U.S. Chief Tech. Officer, White House, to Christopher Jennings, Deputy Ass't to the President for Health Policy & Coordinator for Health Reform, White House, *et al.* (Sep. 2, 2013) [HHS-0106215-222] [HHS-0103206-210].

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***The Committee requires additional information so we can consider the validity of the redactions that the White House applied.***

In light of the fact that the White House was highly involved in designing and activating HealthCare.gov, there may indeed be legitimate Executive Branch interests in withholding certain documents from the Committee. The Committee is mindful of the need to balance the interests of two co-equal branches of government. So that the Committee can attempt to accommodate the White House's stated interest in documents responsive to the subpoena, we require further information. Please provide details as to the total number of documents reviewed; the total number of documents withheld; the types of documents withheld; a general description of any redactions applied; the specific Bates-numbered pages to which any such redactions apply; and the date by which the White House review will be complete. This information is essential in order to evaluate any privilege that may be applicable and to assess whether the documents and information withheld are necessary for the Committee's investigation.

The Department's response to the Committee's subpoena has already been substantially delayed. To avoid additional delays that are preventing the Committee from completing its investigation, please provide a written response including the requested information as soon as possible, but by no later than May 1, 2014. 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.

Thank you for your attention to this important matter. Please contact my staff at (202) 225-5074 with any questions about this request.

Sincerely,



Darrell Issa  
Chairman

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