

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

June 7, 2016

The Honorable Daniel Levinson
Inspector General
Department of Health and Human Services
330 Independence Avenue, SW
Washington, D.C. 20201

Dear Mr. Levinson:

We are writing to request that the Office of the Inspector General (OIG) investigate the Centers for Medicare and Medicaid Services' (CMS) failed oversight of the development and implementation of Oregon's state-based health insurance exchange, Cover Oregon, and Oregon's misuse of the federal funds awarded for the project.

Oregon was awarded \$305 million in federal taxpayer dollars to build Cover Oregon yet the state exchange never came to fruition, and the money is gone. For more than a year, the Committee has investigated the Cover Oregon collapse.¹ The Committee obtained more than 170,000 pages of documents and testimony from five key witnesses. Documents and testimony show Oregon officials knowingly misrepresented the status of the health insurance exchange to HHS in order to secure federal funds, and Cover Oregon and the Oregon Health Authority (OHA) misused those funds. A staff report detailing the findings of the Committee's year-long investigation is enclosed with this letter.

One of the most concerning findings of the Committee's investigation is that CMS failed to adequately oversee the development of Cover Oregon and Oregon's use of federal funds. In fact, the Committee found no evidence of any meaningful oversight by CMS.

Because the aggressive timeline set by the Patient Protection and Affordable Care Act (PPACA) required an operational exchange by October 1, 2013, Oregon should have clearly defined a reasonable project scope during the early stages of the project. Oregon failed to do so, however, and instead tried to modernize its entire healthcare technology system. Unfortunately, CMS approved of Oregon's plan and the former Director of OHA and interim Executive Director of Cover Oregon testified that he was not aware of CMS raising concerns about Oregon's

¹ Letter from Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform, Jim Jordan, Chairman, Subcomm. on Health Care, Benefits and Administrative Rules, Mark Meadows, Chairman, Subcomm. on Gov't Operations, and Will Hurd, Chairman, Subcomm. on Information Technology, to Hon. John Kitzhaber, Governor of Oregon (Feb. 13, 2015).

ambitious goal.² In contrast, the Quality Assurance vendor for the project continuously warned of the risks associated with the ambitious scope for the project. Furthermore, during project development, CMS congratulated Cover Oregon for its progress on developing the state-supported information technology (IT) platform while the Quality Assurance vendor identified the overall risk level for the project as high.³ The delays and problems caused by the ambitious and undefined project scope were exacerbated by the fact that, as your office noted in its February 2016 report on HealthCare.gov, CMS delayed issuing many regulations and guidelines for the exchanges.⁴

Documents uncovered by the Committee also show CMS failed to review many of the contracts entered into by OHA and Cover Oregon. The Committee obtained an email that shows CMS did not approve any of the State's contracts with the primary IT vendor for the project, Oracle.⁵ Similarly, an independent report issued by First Data stated "it does not appear as if CMS reviewed or approved the Oracle purchase orders. First Data was told they were discussed with CMS in quarterly calls, but CMS did not ask them to review them."⁶ Many of the contracts entered into by OHA and Cover Oregon were on a "time and materials" basis rather than linking payments to specific deliverables.⁷ CMS entered into similar types of contracts with its primary technology vendor for HealthCare.gov, and in your February 2016 report, your office criticized CMS's IT contracting on a "cost-plus-fixed-fee" basis.⁸

Similarly, an August 17, 2014, draft memorandum from Liz Baxter, the Chair of the Cover Oregon Board of Directors, to other members of the Board of Directors stated:

[I]n the course of reviewing this and other contracts, Aaron has learned that required documentation for some of/many of?? Cover Oregon's non-IT contracts was not sent to the Centers for Medicare and Medicaid Services (CMS). He is in discussions with CMS to ensure they have all necessary information on current contracts, and he is implementing a new process to ensure that CMS receives proper documentation for all contracts moving forward.⁹

² First Data, *Cover Oregon Website Implementation Assessment: Assessment Report* (updated April 23, 2014) at 50-53; H. Comm. on Oversight & Gov't Reform, Deposition of Bruce Goldberg (April 6, 2016) at 25.

³ See Email from Mike Bonetto to Rocky King, Sean Kolmer, copying Amy Fauver, Aaron Karjala, Carolyn Lawson, Kelly Harms, Lisa Morawski, Nora Leibowitz, Triz delaRosa, Tom Jovick, (Jan. 13, 2013) (GOV_HR00013743-45); Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report for Jan. 2013 (Issued Feb. 15, 2013) (GOV_HR00045693-727) at 4.

⁴ U.S. Dept. of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplace*, No. OEI-06-14-00350 (Feb. 2016) at 11 & 20.

⁵ Email from Suzanne Hoffman to Betty Uzupis, copying Sarah Miller (March 7, 2014) (Oracle_HOGR_00002739-42).

⁶ First Data Report, at 36.

⁷ *Id.* at 4, 7 & 36.

⁸ United States Department of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplace* (Feb. 2016) at 13-14.

⁹ Email from Patricia McCaig to Mike Bonetto (Aug. 17, 2014) (RMBG2001633-38).

The Committee's findings with respect to CMS's oversight of the Cover Oregon project are consistent with the U.S. Government Accountability Office's (GAO) findings regarding CMS's oversight of state IT projects. In September 2015, GAO found that CMS failed to adequately oversee states' marketplace IT projects and recommended that CMS improve oversight of state IT projects.¹⁰

Your office has audited state marketplaces to determine whether or not they allocated costs for establishing a health insurance marketplace to their establishment grants in accordance with Federal requirements and for other purposes. The audits found Nevada and Maryland misallocated costs for establishing their health insurance marketplaces to their establishment grants.¹¹ The Committee obtained documents that similarly show OHA may have failed to allocate costs to its establishment grants and the Medicaid program in accordance with federal requirements.¹²

Furthermore, the Committee obtained documents that show Oregon officials knowingly misrepresented the status of the health insurance exchange to HHS in order to secure federal funds. On August 20, 2013, the Oregon Department of Human Services (DHS) and OHA submitted an Implementation Advance Planning Document Update (IAPD-U) to CMS and the U.S. Department of Agriculture to "provide an annual update for Oregon's funding partners, address objectives for the next year and request approval from CMS and FNS to fund planned efforts."¹³ In the submission, OHA and DHS stated: "OHA through the HIX-IT project successfully delivered a functional insurance exchange to Cover Oregon on April 30, 2013."¹⁴

Elsewhere in the IAPD-U, OHA and DHS stated that "Since submission of the last IAPD-U, Oregon Health Authority (OHA) achieved the deliverables outlined in the early innovator grant and successfully delivered a functional insurance exchange to Cover Oregon."¹⁵

Documents obtained by the Committee show OHA and DHS made these statements knowing they were false. An email from the Executive Director of Cover Oregon shows he

¹⁰ U.S. Government Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Projects*, No. GAO-15-527 (Sept. 2015).

¹¹ U.S. Dept. of Health and Human Services, Office of Inspector General, *Nevada Misallocated Costs for Establishing a Health Insurance Marketplace to its Establishment Grants*, No. A-09-14-01007 (Feb. 2016); U.S. Dept. of Health and Human Services, Office of Inspector General, *Maryland Misallocated Millions to Establishment Grants for a Health Insurance Marketplace*, No. A-01-14-02503 (March 2015).

¹² For example, the Committee obtained an email that shows in May 2013, the Executive Director of Cover Oregon believed OHA was improperly handling and tracking the use of federal funds. He wrote to a member of the Cover Oregon Board of Directors: "This is why we are assuming the lead – we know every penny we have spent, on what and when. We have not had that information from OHA and they were not tracking correctly. So – this exhaustion of funds surprised Bruce also." Email from Rocky King to Sean Kolmer, Mike Bonetto (May 4, 2013) (GOV_HR00018536-40).

¹³ Oregon Dept. of Human Services, Oregon Health Authority, "DHS Modernization Project: Implementation Advance Planning Document Annual Update," Submitted for approval by Centers for Medicare and Medicaid Services, U.S. Dept. of Agriculture (Aug. 20, 2013) at 3.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 3.

The Honorable Daniel Levinson

June 7, 2016

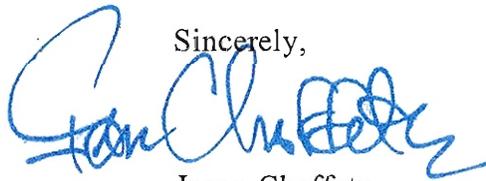
Page 4

believed the website was not fully functional and instead was “in the middle of development” as of May 4, 2013—shortly thereafter the date identified in the IAPD-U.¹⁶

Federal grant recipients have an obligation to federal taxpayers to ensure grant funds are used responsibly. In light of the information uncovered by the Committee during the course of its investigation of the Cover Oregon collapse, we request your office look into these issues.

Thank you for your attention to this important matter. Please contact Committee staff at (202) 225-5074 with any questions about this request, or any of the Committee’s findings with respect to Cover Oregon.

Sincerely,



Jason Chaffetz
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

¹⁶ Email from Rocky King to Sean Kolmer, Mike Bonetto (May 4, 2013) (GOV_HR00018536-40).