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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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LAWRENCE J. BRADY  
STAFF DIRECTOR

October 28, 2013

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

Dear Madam Secretary:

The Committee on Oversight and Government Reform is investigating the insurance exchange application, online at HealthCare.gov, established by the Department of Health and Human Services (HHS). As part of this investigation, we are writing to request information related to voter registration data collected during the application process.

ObamaCare requires millions of Americans without employer-sponsored health insurance to sign up for government-approved insurance or face a tax penalty. The Administration issued a regulation so that an online exchange would be available by October 1, 2013, for individuals to compare plans and rates. The online marketplaces, the central part of the Affordable Care Act, are supposed to offer a “dynamic experience” for consumers to purchase insurance.<sup>1</sup> Unfortunately for the public, however, the rollout of the exchanges has been disastrous. The vast majority of consumers have been unable to enroll because of “glitches.”<sup>2</sup> The HealthCare.gov website reportedly suffers from numerous design defects, including coding problems and system architecture flaws.<sup>3</sup>

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<sup>1</sup> *Two Weeks Until Enrollment: Questions for CCHIO: Hearing Before the H. Comm. On Energy & Commerce, Subcomm. on Oversight & Investigations*, 113th Cong. (Sept. 19, 2013) (statement of Gary Cohen, Deputy Administrator & Director, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services), available at <http://docs.house.gov/meetings/IF/IF02/20130919/101323/HHRG-113-IF02-Wstate-CohenG-20130919.pdf>.

<sup>2</sup> Christopher Weaver, Timothy W. Martin & Louise Radnofsky, *Health Exchanges Open for Business—with Glitches*, WALL ST. J., Oct. 1, 2013, available at <http://online.wsj.com/news/articles/SB10001424052702304373104579107963289698586>.

<sup>3</sup> Christopher Weaver, Shira Ovide & Louise Radnofsky, *Software, Design Defects Cripple Health-Care Website*, WALL ST. J., Oct. 6, 2013, available at <http://online.wsj.com/news/articles/SB10001424052702304441404579119740283413018>.

Experts believe the site construction was sloppy, lacking the capacity for high online demand – surprising since the Administration was expecting millions of Americans to sign up using the site.<sup>4</sup>

While HHS and its contractors continue to struggle with the task of processing applications for health insurance coverage, the agency uses the website to collect voter registration information. Once an applicant completes the online application for health care coverage a dialog box appears asking, “Would you like to register to vote?” In light of the National Voter Registration Act of 1993 (NVRA), also known as the Motor Voter Act, which requires any agency that provides public assistance to provide individuals with an opportunity to register to vote, the Department decided to include the voter registration option on the healthcare application.<sup>5</sup> The inclusion of this voter registration may give applicants the impression that registering to vote is somehow tied to receiving health care benefits, such as insurance subsidies.

Given the well-documented flaws with the health care application process, the public lacks confidence that HHS has the ability to safeguard applicants’ voter information. Documents reviewed by the Committee show that applicants may submit personal information over the internet during the application process without encryption, potentially exposing personally identifiable information to interception and abuse. As a result, applicants attempting to register to vote face the possibility of unknowingly making their voter registration information available online. Additionally, applicants face the potential of identity theft or third party access to their private information. According to one expert, the health care exchange application process is viewed “as a huge value target” for hacking an account.<sup>6</sup>

Further, it is unclear how HHS uses the voting information it collects once a user submits this data on the website. Applicants rightly expect that only state election officials will have access to their information. Voter registration contains important personal details that are valuable to various individuals and organizations. Considering the problems facing the health care website, we are concerned that private information may make its way into the hands of organizations who wish to use the information for their benefit, without notifying the individuals registering to vote or properly obtaining their consent.

Additionally, news reports indicate that insurance companies receive nightly reports with errors and duplicate dates of individuals who have submitted applications for health care.<sup>7</sup> In some instances, insurers receive multiple enrollments and cancellations

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<sup>4</sup> *Id.*

<sup>5</sup> 42 U.S.C. § 1973.

<sup>6</sup> Michael Scherer, *Traffic Didn't Crash the Obamacare Site Along. Bad Coding Did Too*, TIME, Oct. 24, 2013, available at <http://swampland.time.com/2013/10/24/traffic-didnt-crash-the-obamacare-site-alone-bad-coding-did-too/>.

<sup>7</sup> *Id.*

for the same person.<sup>8</sup> These facts raise questions as to what happens when the same individual expresses the desire to register to vote multiple times. HHS does not appear to have the capacity to differentiate between duplicates and first time applicants.

In short, it is unclear what happens to voter registration information once HHS receives it. Applicants have an expectation that the federal government is not transmitting private information to third parties – knowingly or unknowingly. To better assess the extent of these problems, we are writing to request information about HHS policies and practices regarding the use of voter registration information. Please provide the following documents and information as soon as possible, but by no later than noon on November 12, 2013:

1. All documents, including e-mails, related to HHS's decision to include voter registration on the Health Insurance Marketplace.
2. All documents relating to policies and guidelines HHS has created that govern the use of voter information collected through HealthCare.gov.
3. All documents relating to policies and procedures HHS uses to ensure that voter registration information remains private.
4. All documents relating to government agencies and third-party organizations with access to the voter registration information collected by HHS on the Health Insurance Marketplace, as well as aggregate data regarding applicants' healthcare elections.
5. All documents relating to policies and procedures in place to ensure data encryption and prevent identity theft.
6. All documents relating to policies and procedures HHS has in place regarding instances in which the same individual indicates the desire to register to vote on multiple occasions.

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. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

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<sup>8</sup> *Id.*

The Honorable Kathleen Sebelius  
October 28, 2013  
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If you have any questions about this request, please call Lamar Echols of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this matter.



Darrell Issa  
Chairman

Sincerely,



Jason Chaffetz  
Chairman  
Subcommittee on National Security

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member  
The Honorable John F. Tierney, Ranking Minority Member  
Subcommittee on National Security

ONE HUNDRED THIRTEENTH CONGRESS

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### Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.