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# Congress of the United States

## U.S. House of Representatives

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November 20, 2013

The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, Southwest  
Washington, D.C. 20201

Dear Madam Secretary:

We are writing to alert you and ask for your immediate response to a major consequence of the failed launch of the Affordable Care Act (ACA) that has been exposed through the flawed Exchanges and income verification system.

For example, the State of Washington Health Benefit Exchange is sending a letter to 8,000 residents informing them that the Exchange miscalculated their eligibility for federal tax credits. Given that only 7,091 people actually enrolled in the Washington Exchange, the error rate for determining eligibility is astonishing. The State of Oregon did not have a single enrollment in October because it could not get the eligibility verification system up and running. The District of Columbia Exchange's online pricing and eligibility system was shut down for the entire month of October because it was generating error rates of up to 15 percent in testing. These are examples from the state-based Exchanges, which are widely regarded as working more effectively than the federal government-run Exchanges.

As you know, you must certify that there is a functioning income verification system in place before any tax credits or cost-sharing subsidies can be made available to individuals on January 1, 2014. As the recent debt ceiling bill, P.L. 113-46, states:

Notwithstanding any other provision of law, the Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall ensure that American Health Benefit Exchanges verify that individuals applying for premium tax credits under section 36B of the Internal Revenue Code of 1986 and reductions in cost-sharing under section 1402 of the Patient Protection and Affordable Care Act (42 U.S.C. 18071) are eligible for such credits and cost sharing reductions consistent with the requirements of section 1411 of such Act (42 U.S.C. 18081), and, prior to making such credits and reductions available, the Secretary shall certify to the Congress that the Exchanges verify such eligibility consistent with the requirements of such Act.

At the same time, more than a dozen insurers receiving applications from the federal Exchanges have reported to the *Wall Street Journal* that applications “include duplicate enrollments, spouses reported as children, missing data fields and suspect eligibility determinations.” Do you know that direct enrollment by insurers will reduce the error rate within these applications?

Each of these examples, which are just the ones we know about publicly, are indications of serious system flaws. Individuals who receive an incorrect eligibility determination are, in fact, not receiving accurate information about the cost of health insurance under the ACA. Jessica Sanford of Washington State, who President Obama cited as an early success story for the Exchanges, is a prime example. The Exchange miscalculated her eligibility for subsidies, which changed the cost of her insurance from the original quote of \$198 per month to \$324 per month for a plan with a higher deductible. If the tax credit and cost sharing eligibility mistakes are not discovered, many individuals will receive credits and subsidies for which they are not eligible. Once reconciled with their tax filing, most of these individuals will be surprised to learn they are required to payback the mistaken subsidy.

To avoid these consequences, the law requires you certify to Congress that a system is in place that can accurately verify eligibility before the tax credits are made available. We do not believe you can make that certification today. We also believe it is time to acknowledge that we really do not know if you will be able to do so before January 1. The “tech surge” that is intended to make the healthcare.gov website work for 80 percent of individuals who try to enroll is focused mainly on front-end problems. The billing and payment systems are follow-on problems, and have not been subject to extensive systems testing, let alone the stress of an expected surge in attempted enrollments.

If the tax credits and cost sharing subsidies are not available on January 1, the American people need to know immediately. Individuals and families are making decisions based on inaccurate information, and that needs to be corrected. To begin this process, please respond to the following questions by Wednesday, November 27, 2013:

1. Given that to date you have not forwarded the required certification, are we correct in assuming that you do not believe you could make that certification today?
2. If you are unable to make the required certification, on what date will you notify Congress and the American people?
3. What contingency plans are you making to mitigate the consequences of the inability to complete a working verification system?

4. What is the current error rate in Federal Exchanges with regard to income verification?
5. What is the current error rate in State Exchanges with regard to income verification?
6. What is the current error rate in insurer direct enrollments with regard to income verification?

We look forward to your response as well as working together to attempt to mitigate the consequences of the system's shortcomings.

Sincerely,

*Dave Camp*  
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