

DIANE BLACK
6TH DISTRICT OF TENNESSEE

COMMITTEE ON
WAYS AND MEANS

SUBCOMMITTEE OVERSIGHT

COMMITTEE ON THE BUDGET



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

August 29, 2014

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The Honorable Sylvia Burwell
Secretary, U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Burwell:

As we approach the 2015 Open Enrollment Period, I remain deeply concerned by the absence of a verification process to determine the eligibility for applicants regarding the premium tax credits and other subsidies available under the Affordable Care Act (ACA) prior to the issuance of these subsidies. Verification, as you know, is mandated by the ACA. While I recognize the Administration has unilaterally delayed key provisions to achieve greater oversight of the program and failed to construct a functional Data Hub in a timely fashion, it has come to my attention that the Department of Health and Human Services (HHS) further restricted its ability to utilize existing data sources in order to expedite the verification process.

Earlier this year, the Continuing Appropriations Act of 2014 mandated that:

“the Secretary of Health and Human Services 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.”

In its July 1, 2014 report, the Office of Inspector General concluded, “as of the first quarter of 2014, the Federal marketplace was unable to resolve about 2.6 million of 2.9 million inconsistencies because the CMS eligibility system was not fully operational. It was unable to resolve inconsistencies even if applicants submitted appropriate documentation. These inconsistencies pertained to citizenship, national status, and lawful presence; income; and employer-sponsored minimum essential coverage.”

The law is clear that the government must establish and use effective practices to verify the eligibility for federal subsidies. Such practices are common sense and common practice in order to improve program integrity, reduce fraud, and protect the hard-earned tax dollars of the

American people. The current failure to address the backlog of millions of inconsistencies is of deep concern.

Despite having an opportunity available and an existing contract to engage in more broad verification, it appears the Administration has limited its ability to maximize verification through use of the Equifax Workforce Solutions data base, called “The Work Number.”¹ The Administration’s unilateral decision to delay the employer reporting mandate on July 2, 2013 makes this data all the more critical to building a timely understanding of an applicant’s eligibility for ACA subsidies.

Other government benefit programs exercise verification through the database operated by Equifax Workforce Solutions prior to issuing benefits. Yet, HHS has imposed restrictions that reach far beyond the standards in place to verify programs such as the Supplemental Nutrition Assistance Program, or SNAP, and the Special Supplemental Nutrition Program for Women, Infants, and Children, or WIC, as used in my home state of Tennessee.²

For example, a standard of 13 matching data points was imposed upon Equifax Workforce Solutions, which include fields not necessarily pertinent to building an understanding of income. These include the employer filling in the address and the Employer Identification Number. While these fields certainly hold a level of importance for identification, the fact remains that the data on the applicant can still be helpful and any identification discrepancies could surely be cross referenced by HHS to complete the income verification process.

Other fields in the current year contract include the number of hours an employee works, which not all employers report, even if the gross earnings are available. Even more concerning is the additional requirement for an employee’s net earnings—a data point that most employers are unlikely able to obtain, much less report. It is curious that this level of detail was required in order for the data from Equifax Workforce Solutions to be deemed acceptable.

Furthermore, the Administration did not require States that operate their own exchanges to implement income verification for plan year 2014. I firmly believe that we owe the American taxpayer the same degree of diligence regarding the expenditure of federal resources in the form of premium tax credits whether the applicant comes to the Federal or a State-based Exchange.

Overall, there is much needed action to improve the processes and ensure meaningful and reliable verification is in place to determine the eligibility of subsidies for insurance policies offered at both the federal and state exchanges in the current year and for the 2015 plan year. For this reason, please respond to the below questions:

1. For what purpose and under what justification has HHS imposed the current data matching point criteria on Equifax Workforce Solutions data?
2. Would HHS consider revising the Equifax Workforce Solutions threshold for data points to a level that maintains integrity standards, but also maximizes the available information

¹ Solicitation Number: RFP-CMS-2013-0154

² State of Tennessee Event Number: 34501-0000004307

for the active millions of income inconsistencies, as well as for future applicants in the 2015 plan year?

3. A clear income verification process has not been required by HHS in the State Exchanges. What controls are in place to ensure that the data used by the states is the most accurate, comprehensive, and up to date? How is HHS monitoring the effectiveness of the data controls?
4. Will HHS require and assist States to utilize all tools available at HHS to verify the eligibility of applicants at the state exchanges? If not, please provide an explanation on why this will not be done.

I believe these fundamental questions must be addressed prior to the beginning of the 2015 Open Enrollment Period. We must understand the Administration takes seriously the letter of the law and the requirement to verify an applicant's eligibility for a taxpayer financed subsidy. Please provide a response to my office no later than 30 days from the date of this letter.

Thank you for your attention to this important matter. Should you have any questions pertaining to this request, do not hesitate to contact Ellen Cain in my office at 202-225-4231.

Sincerely,



Diane Black
Member of Congress