Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MEMORANDUM

November 12, 2013

To: **Democratic Members of the Committee on Oversight and Government Reform**

Fr: **Democratic Staff**

Re: **Unfounded Claims About the "Anonymous Shopper" Function of the ACA Website**

Over the course of the past month, Committee Chairman Darrell Issa has accused White House officials of directing the Centers for Medicare and Medicaid Services (CMS) to disable the so-called "anonymous shopper" function of the Healthcare.gov website, which he believed would have allowed users to compare health insurance plans without first creating user accounts. He has alleged that the White House issued this order for political reasons several weeks before the launch of the website to conceal the costs of insurance plans under the Affordable Care Act (ACA) and avoid consumer "sticker shock." In addition, he has asserted that this White House directive resulted in significant problems by creating a traffic bottleneck with the website's account creation function.

Evidence obtained during the Committee's investigation, including internal documents and information provided during interviews and briefings with government officials and contractors, indicates that the Chairman's accusations are inaccurate.

For example, on November 1, 2013, Committee staff conducted a transcribed interview with Henry Chao, the Deputy Chief Information Officer at CMS. He confirmed that he was the official who emailed CGI Federal, the primary contractor working on the website, instructing it to disable the shopper function in September. Mr. Chao explained that this decision was made not by White House officials seeking to conceal costs, but rather by CMS officials frustrated by critical contractor defects in the final weeks remaining before the launch of the website.

When asked by Committee investigators why he directed CGI to disable the shopper function, Mr. Chao answered directly: "Because it failed testing. It didn't work." He stated that it "had been failing over and over again," and that "it was not unveiled to the public, because it doesn't work." When asked if the shopper function "failed in basically its most essential functions," Mr. Chao responded, "Yes." Testing documents obtained by the Committee confirm Mr. Chao's account, showing more than 20 significant defects in the shopper function in the month directly before the October 1 launch.

Mr. Chao also explained that disabling the shopper function did not contribute to increased traffic on the account creation function because the shopper function itself—had it been operational—also would have required consumers to create accounts. Since the shopper function being developed by CGI would have required consumers to submit some personally identifiable information to generate accurate price estimates, federal rules governing the security of information systems would have required the authentication of those user identities.

Mr. Chao explained that the website traffic bottleneck was caused not by disabling the shopper function, but by the inadequate capacity of the enterprise identity management system, which in turn was due to an underestimate of demand. He also stated that this capacity issue was resolved in the first few days after the website's launch.

I. CLAIM THAT WHITE HOUSE ORDERED DISABLING OF SHOPPER FUNCTION FOR POLITICAL REASONS TO MASK "STICKER SHOCK"

A. Accusations by Chairman Issa

During a national television interview on October 27, 2013, Chairman Issa accused the White House of ordering the shopper function to be disabled for political reasons in order to conceal the costs of insurance plans under the ACA. He stated:

> Contractors have already told us that, in fact, people representing—represented that the White House was telling them they needed these changes, including instead of a simple "let me shop for a program then decide to register," they were forced to register and go through all the things that have slowed down the website before they could find out about a price.[1]

During another television appearance on October 22, 2013, Chairman Issa stated that the Administration "buried the information about the high cost of Obamacare" in September in order to avoid "sticker shock" among consumers. He stated:

> The fact is, political interference a month out hid the problem and buried the information they didn't want seen which made the site more vulnerable to waste and overhead that made it work slower.[2]

He added that the Administration "made a decision to put politics ahead of people's real healthcare needs."[3]

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[1] *Face the Nation,* CBS News (Oct. 27, 2013) (online at www.cbsnews.com/8301-3460_162-57609503/face-the-nation-transcripts-october-27-2013-issa-shaheen-shedon/).

[2] *The Real Story With Gretchen Carlson,* Fox News (Oct. 22, 2013) (online at http://video.foxnews.com/v/2761514378001/).

[3] *Id.*

According to Chairman Issa, the "contractors" who provided this information work for CGI, although company officials have denied publicly that they made these claims. On October 21, 2013, Chairman Issa and several other Republican Committee Members sent a letter to Steve VanRoekel, U.S. Chief Information Officer at the Office of Management and Budget (OMB), and Todd Park, U.S. Chief Technology Officer at the Office of Science and Technology Policy (OSTP).[4] Citing a briefing that Committee staff received from CGI on October 16, 2013, Chairman Issa wrote:

> Although CGI officials were not able to identify who within the Administration made the decision to disable the anonymous shopping feature, evidence is mounting that political considerations motivated the decision.[5]

The next day, Ranking Member Elijah Cummings and Committee Member Gerry Connolly, whose staffs also participated in the briefing with CGI, sent a letter to Chairman Issa objecting to his mischaracterization of the company's statements. They wrote:

> For example, in response to a question by Committee staff, CGI officials stated that they had no knowledge of any White House role in specific decisions relating to the website. CGI officials also stated that they had seen no evidence of political considerations affecting operational decisions about the website. And when asked if they were aware of any political intervention by anyone at the White House, CGI officials answered, "No, sir."[6]

Two days later, on October 24, 2013, CGI's Senior Vice President, Cheryl Campbell, testified under oath before the House Committee on Energy and Commerce that, to the best of her knowledge, the White House never gave her company these instructions and that her company's officials never made these statements to Chairman Issa's staff.[7]

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[4] Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Steve VanRoekel, U.S. Chief Information Officer, Office of Management and Budget, and Todd Park, U.S. Chief Technology Officer, Office of Science and Technology Policy (Oct. 21, 2013) (online at http://oversight.house.gov/wp-content/uploads/2013/10/2013-10-21-DEI-Lankford-Jordan-Farenthold-Mica-to-VanRoekel-OMB-re-healthcare.pdf).

[5] *Id.*

[6] Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, and Rep. Gerald E. Connolly, to Chairman Darrell E. Issa, House Committee on Oversight and Government Reform (Oct. 22, 2013) (online at http://democrats.oversight.house.gov/uploads/ACAWebsiteLetter.pdf).

[7] House Committee on Energy and Commerce, *Hearing on Affordable Care Act Implementation.* (Oct. 24, 2013). *See also* House Committee on Oversight and Government Reform Democrats, *Rapid Response: ACA Contractor Contradicts Issa Account of Briefing* (Oct. 24, 2013) (online at http://democrats.oversight.house.gov/press-releases/rapid-response-aca-contractor-contradicts-issa-account-of-briefing/).

B.   Decision Made by CMS Based on Significant Contractor Defects

During his transcribed interview with Committee staff on November 1, 2013, Mr. Chao strongly rejected Chairman Issa's accusations. He explained that he was the official who made the decision to direct CGI to disable the shopper function, in conjunction with several other CMS officials, and that there was no political intervention from anyone at the White House. He stated that his decision was based on significant defects with CGI's work rather than any motivation to conceal the prices of health insurance plans.

After confirming that he made the decision to direct CGI to disable the shopper function, Mr. Chao had this exchange with Committee staff:

> Q: Did you get any direction from anyone above you at CMS to not include anonymous shopper on day one?
>
> A: No.
>
> Q: What about from the White House?
>
> A: No.
>
> Q: What about Administrator Tavenner?
>
> A: No. Maybe I—we conferred with—Jim Kerr and Mary Wallace are considered the, kind of, key business owners that make decisions, so that's why we check with them. So, yeah, we certainly worked with them to, kind of, make that determination.
>
> Q: Are you aware of any political reasons that might have factored into the decision to disable the anonymous shopper function?
>
> A: No.
>
> Q: The decision was based solely on deficiencies and performance of the components prior to the October 1 launch?
>
> A: Yes.[8]

During another exchange with Committee staff, Mr. Chao explained his interactions with CGI officials:

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[8] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Office, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

Q: Did you tell CGI not to move forward with the anonymous shopper function because you wanted to hide the true costs of health plans to the public?

A: No, I did not.

Q: And so the reason that you had said earlier was because it kept failing in testing—

A: Right.

Q: —it wasn't working. Is that correct?

A: Yeah. Through consultation with Mark Oh and Monique and Mary and the CGI folks, we believed that, you know, why deploy something that doesn't work.

Q: So would you say that the anonymous shopper function was ready to go when you decided to turn it off?

A: No, it wasn't ready.[9]

Pressed further, Mr. Chao confirmed repeatedly that political considerations never entered into his decision-making process:

Q: In your discussions with anyone at CMS, HHS, or anyone in the administration, did anyone ever suggest to you that the anonymous shopper function should be turned off so that individuals would not see the true costs of insurance plans available in the federally facilitated marketplace?

A: I've never had that conversation.

Q: So that's a no?

A: It's a no.

Q: It's also been alleged that the decision to turn off the anonymous shopper function was a political decision to mask the sticker shock of Obamacare to the American people. Is that correct or incorrect?

A: Incorrect. …

Q: What was the reason for turning off the anonymous shopper function?

A: Because it failed testing. It didn't work.[10]

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[9] *Id.*

[10] *Id.*

Mr. Chao explained that the shopper function being developed by CGI "had been failing over and over again."[11] When presented with testing documents during his interview with Committee staff, Mr. Chao confirmed that CGI's shopper function had more than 20 significant defects in the month before the October 1 launch.[12] After reviewing an email chain from September 2013, Mr. Chao had the following exchange with Committee staff:

Q: And what's the date on the email chain?

A: September 10th.

Q: So, if you look at the second page, it says that—it appears that there are 22 defects—

A: Right.

Q: —in the anonymous shopper that are planned to be fixed for the 9/10 build. Is that correct? Am I reading that right? It's the second page.

A: Right.

Q: Is that a lot of defects at this point, 9/10—

A: Yes.[13]

Among the nearly two dozen defects identified was the inability of the shopper function to generate accurate premium tax credit information or allow users to compare various plans. Mr. Chao explained:

[A]nonymous shopping in its—like, 2 weeks before October 1st in testing failed. It failed to actually produce even a generalized premium tax credit for a given example, and it failed to plan compare and could not match the right plans with that premium tax credit. So, therefore, it was not unveiled to the public, because it doesn't work.[14]

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[11] *Id.*

[12] CGI Federal, Defect Report for 7.0.0.9 and 7.0.0.9.1 (CGI00025386- CGI00025387) (listing 22 defects as of September 10, 2013); Centers for Medicare and Medicaid Services, *Health Insurance Marketplace Pre-Flight Checklist* (Sept. 17, 2013) (CGI00000023) (notes "defects identified by CMS being treated as critical, target fixes for 9/12").

[13] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Office, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

[14] *Id.*

Mr. Chao added, "You couldn't even bring up the right plans." When asked if the shopper function "failed in basically its most essential functions," Mr. Chao responded, "Yes."[15]

Mr. Chao directed CGI to disable the shopper function on September 18, 2013, in an email with the subject line "Removal of anonymous shopper."[16] During his transcribed interview with Committee staff, Mr. Chao confirmed that he made this decision not because of political intervention from the White House, but due to defects in the shopper function being developed by CGI:

> Q: [A]t some point on or around September 18th, you had conveyed to CGI that the anonymous shopper function could be delayed and did not have to be part of the October 1 launch—
>
> A: Uh huh.
>
> Q: —because of the defects associated with it.
>
> A: Right.[17]

II.   CLAIM THAT DISABLING SHOPPER FUNCTION CAUSED THE WEBSITE TO CRASH

In his letter to OMB and OSTP on October 21, 2013, Chairman Issa asserted that "the decision to disable the anonymous shopper feature contributed to the failure of healthcare.gov on October 1, 2013, and in the weeks that have followed."[18] He cited a number of commentators and outside sources to support his claim. For example, he referenced an October 10, 2013, article in the *Wall Street Journal* that stated:

> Much of the problem stems from a design element that requires users of the federal site, which serves 36 states, to create accounts before shopping for insurance, according to policy and technology experts. The site, healthcare.gov, was initially going to include an option to browse before registering, but the tool was delayed, people familiar with the situation said.

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[15] *Id.*

[16] Email from Henry Chao, Deputy Chief Information Officer, Centers for Medicare and Medicaid Services, to CGI Federal (Sept. 18, 2013) (CGIHR00000001).

[17] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Office, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

[18] Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, to Steve VanRoekel, U.S. Chief Information Officer, Office of Management and Budget, and Todd Park, U.S. Chief Technology Officer, Office of Science and Technology Policy (Oct. 21, 2013) (online at http://oversight.house.gov/wp-content/uploads/2013/10/2013-10-21-DEI-Lankford-Jordan-Farenthold-Mica-to-VanRoekel-OMB-re-healthcare.pdf).

The decision to move ahead without that feature proved crucial because, before users can begin shopping for coverage, they must cross a busy digital junction in which data are swapped among separate computer systems built or run by contractors including CGI Group Inc., the healthcare.gov developer; Quality Software Services Inc., a UnitedHealth Group Inc. unit; and credit-checker Experian PLC.[19]

Other articles expressed similar theories. For example, an October 10, 2013, article in *Forbes* stated:

> A growing consensus of IT experts, outside and inside the government, have figured out a principal reason why the website for Obamacare's federally-sponsored insurance exchange is crashing. Healthcare.gov forces you to create an account and enter detailed personal information before you can start shopping.[20]

During his transcribed interview with Committee staff, Mr. Chao called this claim a "misunderstanding" of how the shopper function being developed by CGI would have worked.[21] According to Mr. Chao, if the shopper function had been enabled on October 1, it also would have required users to establish accounts to authenticate their identities. Mr. Chao explained that, despite reports in the press, the website was not initially going to include an option to browse before registering, so disabling the shopper function had no impact on website delays.

As originally envisioned, the shopper function would have required "Level 1" user accounts, which would have required consumers to "to register for a username and ID so that you can get to that link that says, hey, I want to anonymous shop." Rather than an "anonymous" shopper function, Mr. Chao explained that "'browsing' is maybe a better word to describe it," because Level 1 accounts would have required users to input basic information, such as their birthdates and home addresses, to generate general information about the insurance plans offered where they live. Level 2 accounts would have required much more detailed financial and other information to actually apply for insurance. Mr. Chao explained this point to Committee staff:

> Q: So even under the—if the anonymous shopper function had been enabled, you
>   would still need to create a Level 1 account—

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[19] *Healthcare.gov's Flaws Found, Fixes Eyed,* Wall Street Journal (Oct. 10, 2013) (online at http://online.wsj.com/news/articles/SB10001424052702304500404579127783931191264). *See also "Obamacare Is a Bit Like the Astronaut on Top of the Rocket,"* Washington Post (Oct. 15, 2013) (online at www.washingtonpost.com/blogs/wonkblog/wp/2013/10/15/obamacare-is-a-bit-like-the-astronaut-on-top-of-the-rocket/).

[20] *Obamacare's Website is Crashing Because it Doesn't Want You to Know How Costly Its Plans Are,* Forbes (Oct. 14, 2013) (online at www.forbes.com/sites/theapothecary/2013/10/14/obamacares-website-is-crashing-because-it-doesnt-want-you-to-know-health-plans-true-costs/).

[21] House Committee on Oversight and Government Reform, Transcribed Interview of Henry Chao, Deputy Chief Information Office, Centers for Medicare and Medicaid Services (Nov. 1, 2013).

A: Yes.

Q: —in order to anonymously shop.

A: Right.

Q: Okay. So the way it would've worked is that you would go to the portal, you would create a username and password—

A: Uh huh.

Q: —and then you would have a choice between the fulsome account creation option, in which there's full validation of your identity, et cetera, and you'd get an exact premium subsidy amount, versus a simpler registration process that doesn't require full validation but actually gives you only a rough estimate of the premium?

A: Right.[22]

According to Mr. Chao, the information provided by users for both Level 1 and Level 2 user accounts would have been considered "personally identifiable information" (PII), which is required to be protected under the Federal Information Management Security Act (FISMA) and its implementing guidance. Mr. Chao explained that agencies must authenticate the identity of users of federal information systems that utilize PII:

That's something that isn't CMS invented. It isn't a bunch of bureaucrats that invented it. It is by law that if the Federal Government is collecting information about you—and people get sensitive about this—your address may be very sensitive to you, but we need that address to get an approximation of the rates and benefits that are available in your area so we can do an approximation.

So we're caught between the rule and what people want, and so we have to give you at least the ability to establish a Level 1 account. Right? So you provide your email, you know. It's some very basic level of assurance, right, that you are close to who you say you are. Right? So we use that information to help, kind of, drive what would have been anonymous shopping and browsing.

But as soon as we collect that first piece of data about you, the minute we ask you for your email address, we are asking for your information, and, by default, we have to authenticate you. Because now we're allowing you into the system to perform certain things; we're allowing you access to a Federal system that has very specific rules that apply to it.[23]

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[22] *Id.*

[23] *Id.*

When asked by Committee staff whether disabling the shopper function had any negative impact on the functioning of the website, Mr. Chao stated that it did not:

Q: I just want to make sure we're clear, that the traffic bottleneck had nothing to do with turning on or off the anonymous shopper function?

A: Correct.

Q: And that's because the anonymous shopper function itself would have still required you to register.

A: Yes.[24]

When asked about the October 14, 2013, *Wall Street Journal* article quoted by Chairman Issa asserting that a massive traffic bottleneck was caused by disabling CGI's shopper function, Mr. Chao responded:

A: That's totally speculative. That's somebody's opinion.

Q: And the part about the anonymous shopper function being disabled, creating a massive traffic bottleneck?

A: No, the massive traffic bottleneck—and I'm using somebody else's term—

Q: Sure.

A: —was originally created by the enterprise identity management system not keeping up with the demand for registrations. Because if you can't register for an account, you can't proceed.

Q: Right.

A: So, within 3 to 4 days, that was fixed. This article was written on the 14th, so, by the 14th, that problem had largely cleared up.

Q: So the problem was essentially that CMS underestimated the amount of traffic that the site would experience on October 1?

A: That is true. …

Q: So, just to repeat this for the record, it wasn't the decision to disable the anonymous shopper that led to the bottleneck on October 1, is that correct, rather than the miscalculation as to volume of traffic on HealthCare.gov on the opening days of the launch?

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[24] *Id.*

A: Correct.

Q: So I think that misunderstanding has been so, sort of, prevalent in the news that maybe it causes me to want to just pause and make sure that we're totally clear on it. So if you look back at the article that's Exhibit 4, it basically works off of a premise that, when you decided not to use the anonymous shopper function, that caused people to create an account and enter personal information, which, therefore, caused a traffic bottleneck. Is that correct or incorrect?

A: It's still incorrect.[25]

Several weeks after the October 1 launch of Healthcare.gov, agency officials added to the website a much more rudimentary shopper function that was not developed by CGI, does not request personally identifiable information, and does not require consumers to establish user accounts. This feature has been criticized, however, for using broad age categories to generate estimates that differ from the actual prices consumers would pay based on their specific personal information.

During his interview with Committee staff, Mr. Chao addressed the inherent inaccuracy of price approximation tools that do not utilize any personal consumer information. Referring to this issue as a "double edged sword," he explained that users may obtain more accurate price information by providing personal information, which in turn requires identity authentication, but "the flip side of the coin is then, if you don't do it, then people get pissed off because you gave them a wrong number."[26]

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[25] *Id.*

[26] *Id.*