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U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman



**Risks of Fraud and Misinformation with ObamaCare Outreach Campaign:
How Navigator and Assister Program Mismanagement Endangers Consumers**

ObamaCare Navigator and Assister Staff Report No. 2

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
113th CONGRESS
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Overview

The Committee first wrote to HHS Secretary Sebelius regarding the outreach campaign that has accompanied the implementation of ObamaCare on May 6, 2013. Given the importance of this issue, the continuing oversight of the Navigator and Assister programs since the rollout of Healthcare.gov remains a high priority for the Committee. The preliminary staff report the Committee released on September 18, 2013 outlined concerns that lax Navigator and Assister training requirements and vague marketing standards increased the likelihood of identity theft for consumers.¹ Despite several letters, hearings, staff briefings, and transcribed interviews with U.S. Department of Health and Human Services officials responsible for the program, HHS failed to heed the Committee's warnings. And, as predicted, after open enrollment began, news reports revealed poorly-trained Navigators gave consumers incorrect information about the health care exchanges, violated HHS rules and procedures, and even encouraged applicants to commit tax fraud in some instances.

In response to these serious reports, HHS officials responsible for the Navigators and Assisters programs briefed Committee staff on November 21, 2013. HHS officials in attendance included Gary Cohen, Deputy Administrator and Director of the Center for Consumer Information and Insurance Oversight (CCIIO); Mandy Cohen, Director of the Consumer Support Group at CCIIO as of November 2013; and Vicki Gottlich, former Director of the Consumer Support Group at CCIIO and current Senior Policy Advisor to Mr. Gary Cohen.² Information obtained from the November 21, 2013 briefing and internal HHS documents call into question the effectiveness of these outreach programs, and, more importantly, the Administration's ability to safeguard consumer information. This update to the Committee's preliminary staff report shows that HHS's mismanagement of the Navigator and Assister programs induces fraudulent behavior and poses real threats to the safety of consumers' personally identifiable information, such as ones social security number, yearly income and other sensitive tax information .

¹ *Risks of Fraud and Misinformation with ObamaCare Outreach Campaign: How Navigator and Assister Program Mismanagement Endangers Consumers*, Majority Staff Report, H. Comm. on Oversight & Gov't Reform (Sept. 18, 2013).

² Briefing by U.S. Dep't of Health & Human Servs. Staff to Committee Staff regarding Navigators and Assisters Programs (Nov. 21, 2013) [hereinafter Nov. 21 HHS Briefing].

Introduction

Major problems have plagued the Navigator and Assister programs in the first ten weeks of open enrollment. The Committee's preliminary staff report predicted many of these problems. Documents obtained by the Committee show that Navigators and Assisters were caught unprepared when HealthCare.gov became inoperative, and they lacked direction from HHS about how to enroll consumers in the early days of the rollout.³ News reports indicate that Navigators gave consumers incorrect information about the enrollment process; some Navigators went so far as to encourage consumers to commit tax fraud by underreporting income in order to qualify for ObamaCare's health insurance subsidies.⁴ Some Navigators assisted applicants before completing their 5 to 20 hour online training course, and others took custody of paper applications and mailed them for the applicant, violating the rule that applicants must mail in the application themselves.⁵ The following updates highlight the Committee's primary findings about the implementation of the Navigator and Assister programs to date.

I. Lax Oversight at HHS Fails to Ensure Organizations Report Navigator Misconduct

Throughout October and November, news outlets routinely reported Navigator misconduct. Navigators and Assisters and those associated with Navigator and Assister organizations propagated misinformation about the health insurance marketplace and the enrollment process, encouraged fraud, and violated Navigator rules and procedures. Although the vast majority of Navigator and Assister misconduct and misinformation will go unreported, below are a few examples of publicized Navigator misconduct and misinformation:

- **Navigators from the Urban League of Dallas were captured on video, encouraging applicants to lie on their health insurance application so the applicants could qualify for tax subsidies.**⁶ Navigators were also recorded advising an applicant to lie about her smoking habits to obtain a lower monthly premium. It was later discovered that two of the so-called Navigators involved in the incident were assisting consumers with their applications even though they had not completed their training and certification requirements. The Navigator organization in question fired one Navigator, and suspended two others. The Centers for Medicare and Medicaid Services (CMS) officials referred this incident to the Department of Justice and put the organization on a "corrective action plan."⁷

³ CCIIO-Wide War Room (Oct. 3, 2013), *available at* <http://oversight.house.gov/wp-content/uploads/2013/11/2013-11-01-War-Room-Notes-10-3-to-10-21.pdf> [hereinafter War Room Notes].

⁴ Greg Janda, Undercover Cameras Claim to Catch Obamacare Navigators in Fraud, NBCDFW, Dec. 11, 2013, *available at* <http://www.nbcdfw.com/news/local/Undercover-Cameras-Claim-to-Catch-Obamacare-Navigators-in-Fraud-231724611.html>.

⁵ Jenny Gold, *Navigators Tread Water As Website Problems Continue*, KAISER HEALTH NEWS, Oct. 24, 2013, *available at* <http://capsules.kaiserhealthnews.org/index.php/2013/10/navigators-tread-water-as-website-problems-continue/>.

⁶ Janda, *supra* note 4.

⁷ Nov. 21 HHS Briefing.

- **One self-identified Navigator gave a television interview in which she told viewers blatantly incorrect information: that applicants' credit scores could impact their eligibility for certain plans.**⁸ It later came to light that the woman was not a certified Navigator, but rather a volunteer with a Navigator organization. Ms. Gottlich – the Director of the Consumer Support Group at the time of the incident – was unsure as to whether the woman has been banned from participation with the Navigator group moving forward, saying “who know what she’s doing on her own.”⁹ Although HHS took no corrective action with the Navigator organization itself, there were “conversations with the grantee immediately that only people who were certified could be Navigators.”¹⁰
- **Mountain Project, Inc., a Navigator grantee organization in North Carolina, has been collecting and mailing paper applications on behalf of applicants, in violation of Navigator rules and procedures.**¹¹ According to the Navigator Standard Operating Procedures Manual, “[navigators] may not mail applications for consumers.”¹² Neither Mr. Gary Cohen, nor Ms. Cohen, nor Ms. Gottlich – the three HHS briefers – were aware of the report, despite the fact that Chairman Issa’s November 7, 2013 letter to Secretary Sebelius regarding problems with the Navigator and Assister programs discussed it at length.¹³

HHS officials responsible for the Navigator program did not learn of the aforementioned incidents from internal oversight procedures, but rather from news reports. In the case of the North Carolina organization mailing applications for applicants, HHS officials told Committee staff they were unaware of the incident as of November 21, 2013, despite the fact that the Chairman informed Secretary Sebelius of the incident in a November 7, 2013 letter outlining concerns about the Navigator program.¹⁴ According to Ms. Cohen, CCIIO relies on the Navigator grantees and consumers to report Navigator fraud to an HHS call center. During the staff briefing, Ms. Cohen stated that due to budget restrictions, CMS has conducted only one site visit to a Navigator organization. Furthermore, CMS has no plans to implement a “secret shopper” program to monitor whether Navigators and Assisters are following proper guidelines and procedures. While Ms. Cohen did acknowledge it was possible for regional CMS offices to perform unannounced site visits, she was unaware if any had taken place thus far.¹⁵

Additionally, according to HHS officials, voluntary webinars are in place for continuing education purposes.¹⁶ The topics of these webinars, however, show that they simply cover broad

⁸ *Health Care Reform: Credit Scores Impacting Insurance Plans*, WKMG, Oct. 9, 2013, available at <http://www.youtube.com/watch?v=VUst0rbHQf0#t=57> (last accessed Dec. 12, 2013).

⁹ Nov. 21 HHS Briefing.

¹⁰ *Id.*

¹¹ Gold, *supra* note 5.

¹² Health Insurance Marketplace Navigator Standard Operating Procedures Manual, Centers for Medicaid and Medicare Services, U.S. Dep’t of Health & Human Servs. (Aug. 2013).

¹³ Nov. 21 HHS Briefing.

¹⁴ See Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, to Hon. Kathleen Sebelius, Sec’y, U.S. Dep’t of Health & Human Servs. (Nov. 7, 2013).

¹⁵ Nov. 21 HHS Briefing.

¹⁶ *Id.*

topics largely in reaction to recently identified large-scale problems. For example, after the tax fraud scandal involving Navigators hired by the Urban League, HHS conducted a webinar on reporting income. After the HealthCare.gov website crashed, the webinars focused on the call center and paper applications. Thus, it is apparent that the program suffers from mismanagement, and leadership fails to anticipate problems before they occur.

II. Navigators Were Unprepared for Website Crash and Lacked a Contingency Plan

As the HealthCare.gov website remained virtually inoperable during the first few weeks of the rollout, Navigators were essentially useless during this time period. According to Mr. Cohen, no one informed Navigators of the possibility that the website would not be functional. Mr. Cohen stated that even he had no indication that the website would not work on October 1, 2013. Because HHS emphasized that the website should be the default method of enrollment, the majority of the Navigator training focused on online applications. In fact, Ms. Gottlich stated that “99.99 percent of the time there's going to be no paper applications.... Navigators are not going to be completing paper applications. Navigators are going to be doing all the applications online.”¹⁷ Unable to use the website because of widespread glitches, Navigators lacked direction from HHS on how to sign up consumers.

Because HHS lacked a backup plan for Navigators in the event that the website crashed, there was widespread confusion among the Navigator organizations in the first month of enrollment. In a Committee briefing, Mr. Cohen admitted that Navigators lacked direction in the early days because “it took a while to know what was happening.”¹⁸ He stated that “[We] tried to stay with the website as long as possible out of caution, but at some point it was clear that [we] had to go with the paper and call center.”¹⁹ Also during the briefing, Ms. Cohen stated that “it seems like in hindsight,” there should have been contingency plans for the website’s failure.²⁰ After October 1, 2013, HHS began to conduct weekly webinars for Navigators and other outreach assistance personnel. As discussed above, the first two webinars covered the call center and paper applications.

HealthCare.gov “War Room” meeting notes, obtained by the Committee, show confused HHS officials struggling to advise Navigators about how to respond to the inoperable website. The notes from October 11, 2013 state, “[t]he paper applications allow people to feel like they are moving forward in the process and provides another option; at the end of the day, we are all stuck in the same queue.”²¹ Four days later, at an October 15 meeting, the notes state, “Navigators are seeing people very frustrated and walking away, so they are turning to paper applications to protect their reputations as people in the communities who can help, even though paper applications will not have a quicker result necessarily.”²² By October 21, 2013, according

¹⁷ Briefing by U.S. Dep’t of Health & Human Servs. Staff to Committee Staff regarding Navigators and Assisters Programs (Apr. 18, 2013).

¹⁸ Nov. 21 HHS Briefing.

¹⁹ *Id.*

²⁰ *Id.*

²¹ War Room Notes.

²² *Id.*

to the notes, “[W]e are to instruct Navigators to use paper applications rather than go through the call center.”²³ Because of its failure to anticipate and prepare adequately for website problems, it took HHS three full weeks to comprehend the vast scale of the technical problems and direct Navigators away from the website and toward paper applications. The push towards the use of paper applications further increases security risks, since health insurance exchange applications contain personally identifiable information such as the applicants’ full name, social security number, the names and social security numbers of everyone in the applicant’s household, and income for every member of the household.

III. Insufficient Consumer Protections and Lax Navigator Training Requirements Result in Misinformation and Fraud

The Administration decided not to require Navigators to undergo background checks or fingerprinting, even though Navigators will have access to highly sensitive and personal information, such as social security numbers and tax returns. In fact, the Administration failed to place any restrictions on who can become a Navigator or Assister. In response to questioning from Senator Cornyn, Secretary Sebelius recently replied that it is “possible” a convicted felon could become a Navigator.²⁴

In a May 21, 2013 full Committee hearing, Members asked Mr. Cohen how Navigators should respond if an individual, out of desire for a larger health insurance tax subsidy, reported being paid under the table and failing to report that income. Mr. Cohen responded that he would “have to think about that and talk to folks.”²⁵ Months later, during a transcribed interview with the Committee, Mr. Cohen stated, “the idea that someone who is coming for a Federal benefit is going to say ‘but I am a tax cheat’ seems maybe not the most likely scenario.”²⁶ When pressed by Committee staff to answer whether Navigators and Assisters would get training to deal with situations in which consumers mention unreported income, Mr. Cohen stated “I don’t know the answer to the question, and this could be one of the areas where it is a little beyond the ability of your average Navigator.... I just don’t know what the training provides with respect to that particular question, but I hear you.”²⁷

During the November 21, 2013 committee staff briefing, Mr. Cohen stated that he did not anticipate tax fraud to be an issue, despite numerous questions from the Committee in letters to Secretary Sebelius, at a congressional hearing, and in a transcribed interview.²⁸ After Dallas Urban League Navigators had encouraged applicants to under-report income, Mr.

²³ *Id.*

²⁴ [Barnini Chakraborty](http://www.foxnews.com/politics/2013/11/06/sebelius-back-in-hot-seat-on-capitol-hill-over-rocky-rollout-obamacare/), *Felons could have been hired as ObamaCare 'navigators,' Sebelius tells Senate panel*, Fox News, Nov. 6, 2013, available at <http://www.foxnews.com/politics/2013/11/06/sebelius-back-in-hot-seat-on-capitol-hill-over-rocky-rollout-obamacare/>.

²⁵ *Examining The Concerns About the ObamaCare Outreach Campaign: Hearing Before the H. Comm. on Oversight and Government Reform, Subcomm. on Energy Policy, Health Care, and Entitlements, and Subcomm. on Economic Growth, Job Creation And Regulatory Affairs*, 113th Cong. 20-21 (2013) (Statement of Gary Cohen, Director, Center for Consumer Information and Insurance Oversight).

²⁶ Transcribed Interview of Gary Cohen, U.S. Dep’t of Health & Human Servs. (Aug. 7, 2013).

²⁷ *Id.*

²⁸ Nov. 21 HHS Briefing.

Cohen was still unable to answer whether or not HHS had prepared written guidance for Navigators if an applicant states the intention to under-report income. Mr. Cohen admitted there is a need for better training on the issue through the ongoing education process, and he did not ruling out requiring Navigators to report tax fraud in the future. To date, however, the Administration has not taken the necessary steps to prevent this type of tax fraud.

Navigators also lack guidance about how to comply with the Voting Rights Act, which requires that federal government applications provide the opportunity for applicants to indicate their interest in registering to vote.²⁹ Although online and paper applications for health insurance exchanges include a box asking applicants if they would like to register, there is no guidance explaining how Navigators should respond if an individual indicates that they want voter registration information. According to Ms. Cohen, Navigator organizations cannot use grant funding for voter registration activities. Navigators are not supposed to help applicants register to vote, and Navigators should refer applicants interested in registering to vote to other agencies for assistance. In spite of these restrictions, no one has communicated this information to Navigators through training or guidance. Ms. Cohen was unable to explain how Navigators should respond to requests for assistance with voter registration.

Ms. Cohen told Committee staff that CMS keeps a list of certified Navigators, which, as of mid-November, numbered 2,500 individuals.³⁰ This list is not available to the public. Committee staff asked Ms. Cohen if an individual could contact CMS to verify whether or not a Navigator was certified as a check against individuals posing as Navigators to steal personally identifiable information. She responded that CMS would not give out that information, and instead, the individual should ask the Navigator's affiliated organization directly.³¹ Her response failed to take into account the fact that would-be identity thieves could easily claim to be working for a fake organization and have one of their associates answer phone calls on behalf of that organization. A Navigator organization could also easily misrepresent the qualifications of an individual who is associated with that organization but is not a certified Navigator. Moreover, despite informing Committee staff that certified Navigators are not permitted to solicit door-to-door, CMS has done little to inform consumers of this policy. As a result, other groups that are not certified to facilitate enrollment but engage in door-to-door solicitation create confusion among consumers.

Conclusion

The Committee is committed to continuing this important oversight of the Navigator program in an effort to curb fraud and mismanagement and ensure the Administration does not waste additional taxpayer dollars on a program that puts consumers at risk. The Committee will continue to seek to identify potential problems with the programs, and applauds the consumer protection efforts of states seeking to create meaningful training standards and background checks requirements.

²⁹ 42 U.S.C. §§ 1973 - 1973aa-6.

³⁰ This number does not include Assistants in the 17 states with state-based exchanges or the additional certified application counselors.

³¹ See Nov. 21 HHS Briefing.