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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
GABRIELLE A. BATKIN, MINORITY STAFF DIRECTOR

March 21, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Commissioner Koskinen:

The Committee continues to conduct oversight of the implementation of the Affordable Care Act (ACA) and, in particular, to examine the distribution of Advanced Premium Tax Credits. The Committee recently released a majority staff report, which is enclosed, that found that the Centers for Medicare and Medicaid Service (CMS) has awarded \$750 million in tax credits to individuals who were later deemed to be ineligible for coverage because they failed to prove their citizenship or lawful presence in the United States.¹ The report additionally found that the Internal Revenue Service (IRS) lacks an effective mechanism to recoup credits that CMS awarded on behalf of ineligible individuals. As we discussed in our meeting on March 9, I am requesting additional information about the IRS's recoupment of tax credits that CMS awarded to ineligible individuals.

If an individual fails to provide sufficient documentary evidence of citizenship or lawful presence, CMS must terminate the individual's ACA coverage, including tax credits.² As you stated in a July 2015 letter, "[a Premium Tax Credit] is not allowed for the coverage of an individual who is not lawfully present in the United States and . . . all [Advanced Premium Tax Credits] paid for a not lawfully present individual who enrolls in a qualified health plan must be repaid."³ However, while you asserted in our meeting that the IRS has improved its ACA compliance enforcement, you agreed that the IRS still does not collect information about the reason for an individual's coverage termination. This information is necessary to determine whether the individual must repay his or her credit.

I initially wrote to you about this issue in May 2015.⁴ In your response, you acknowledged a lack of information sharing between CMS and the IRS, stating that "[t]here are no agreements between the IRS and the HHS (or the CMS) regarding [Advanced Premium Tax

¹ Advanced Premium Tax Credits are paid by CMS directly to an enrollee's insurer on behalf of the enrollee. Advanced Premium Tax Credits decrease the individual's monthly premium and are available to individuals whose income is between 100% and 400% of the Federal Poverty Level. Majority Staff, U.S. Senate Committee on Homeland Security & Governmental Affairs, *Affordable Care Act Premium Tax Credits: HHS and IRS Lack Plan to Recover Improperly Spent Taxpayer Dollars* (2016).

² *Id.*

³ Letter from Hon. John Koskinen, Comm'r, IRS, to Hon. Ron Johnson, Chairman, HSGAC (July 14, 2015).

⁴ Letter from Hon. Ron Johnson, Chairman, HSGAC, to Hon. John Koskinen, Comm'r, IRS (May 21, 2015).

Credits] for those individuals whose coverage was terminated because the Marketplace was unable to confirm citizenship or lawful status.”⁵ You stated that CMS sends monthly reports to the IRS that contain “months of coverage, [Advanced Premium Tax Credit] amounts, and associated premiums,” but for an individual whose coverage was terminated, the report “does not indicate why coverage terminated.”⁶ As you stated in your letter, coverage may terminate for “any number of reasons” and, in itself, does not indicate that the individual failed to verify his eligibility.⁷

Moreover, as the staff report found, the forms that the IRS uses to reconcile Advanced Premium Tax Credits—Form 1095-A and Form 8962—do not solicit information about an individual’s coverage termination.⁸ Form 1095-A contains information about the plan the individual purchased and the amount of tax credit the individual received.⁹ Form 8962 collects information to reconcile the difference between the credit that the individual received and the credit to which the individual is entitled.¹⁰ Form 8962, however, assumes that the filer is an eligible enrollee and, thus, it does not collect information about a filer’s eligibility.¹¹ If the individual’s coverage is terminated, Form 8962 only collects the date of termination and does not collect the reason for termination.¹²

In our meeting, you stated that the IRS is better equipped this year to reconcile tax credits because the IRS receives data more promptly from CMS. However, I remain concerned that despite improvements to the agencies’ exchange of information, the IRS remains unable to recoup tax credits that CMS awards to ineligible individuals. Accordingly, to assist the Committee with its continued oversight of this important issue, please provide the following information:

1. Does the IRS obtain any information—from CMS, tax forms, or otherwise—about the reason for an enrollee’s termination from ACA coverage? Please explain. If the IRS does not currently collect this information, does it plan to begin collecting this information?
2. Please provide a detailed description of the information that the IRS receives from CMS, including the frequency with which the IRS receives reports, for each of the following:
 - a. Award and distribution of Advanced Premium Tax Credits;
 - b. Reasons for termination of coverage; and

⁵ Letter from Hon. John Koskinen, Comm’r, IRS, to Hon. Ron Johnson, Chairman, HSGAC (July 14, 2015).

⁶ *Id.*

⁷ *Id.*

⁸ An individual who receives an Advanced Premium Tax Credit will receive a Form 1095-A from the exchange. The individual uses the information in Form 1095-A to complete and return Form 8962 when filing taxes.

⁹ Tax Form 1095-A, Health Insurance Marketplace Statement, Internal Revenue Service.

¹⁰ Tax Form 8962, Premium Tax Credit, Internal Revenue Service.

¹¹ *Id.*

¹² *Id.*

- c. Determination of enrollee eligibility and ineligibility.
3. Does the IRS track the amount of money that is improperly distributed through Premium Tax Credits or Advanced Premium Tax Credits?
- a. If yes, how much money does the IRS estimate has been improperly distributed in Premium Tax Credits and Advanced Premium Tax Credits? How much money does the IRS anticipate will be improperly distributed in 2016? Please include credits that are distributed to individuals later determined to be ineligible for credits or coverage.
 - b. How much of this money does the IRS estimate it has recouped? How much does the IRS estimate it will recoup in 2016?
 - c. Does the IRS have a plan to begin tracking this information? If so, how? If not, why not?

Please produce this material as soon as possible, but by no later than 5:00 p.m. on April 4, 2016.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”¹³ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of . . . mismanagement, incompetence, corruption or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government”¹⁴

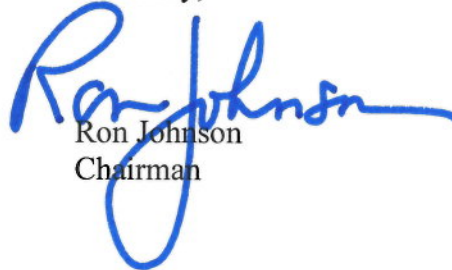
¹³ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

¹⁴ S. Res. 73 § 12, 114th Cong. (2015).

The Honorable John Koskinen
March 21, 2016
Page 4

For purposes of this request, please refer to the instructions and definitions contained in the enclosure. When delivering production sets, please produce to Majority staff in room 340 of the Dirksen Senate Office Building and to Minority staff in room 613 of the Hart Senate Office Building. If you have any questions about this request, please contact Samantha Brennan of the Committee Staff at (202) 224-4751. Thank you for your prompt attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Member

Enclosures

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
114th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, 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 person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the 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 form 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 Files (".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 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.

Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. 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), consult with the Committee staff to determine the appropriate format in which to produce the information.
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 the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
 9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. 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, should be produced immediately upon subsequent location or discovery.
 11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
 12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

Instructions for Responding to a Committee Request

14. 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.
15. 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.
16. 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, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
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.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

Instructions for Responding to a Committee Request

C. Definitions

1. The term “document” in the request or the instructions 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” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should 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” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, 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.

Instructions for Responding to a Committee Request

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean 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” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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