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FROM HEALTH CARE ENROLLMENT TO TAX FILING: A PPACA UPDATE

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH CARE, BENEFITS AND ADMINISTRATIVE RULES

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES

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FROM HEALTH CARE ENROLLMENT TO TAX FILING: A PPACA UPDATE

Thursday, February 26, 2015,

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Jim Jordan (chairman of the subcommittee) presiding.

Present: Representatives Jordan, DesJarlais, Meadows, DeSantis, Mulvaney, Walker, Hice, Carter, Cartwright, and DeSaulnier.

Also present: Representatives Cummings, Connolly, and Lujan Grisham.

Mr. JORDAN. The subcommittee will come to order.

We are pleased to have Mr. Counihan here today, who is the Director and CEO of Marketplace and Exchanges. We are glad to have you here, but we are disappointed that much of the information that the committee has been requesting, primarily through Congressman Meadows office, has yet to be provided to the committee. So, Mr. Counihan, you are going to get some questions about that.

Beginning on December 8th of last year, Chairman Meadows staff started requesting detailed information on Obama Care enrollment. The Administration's response to this basic data request has been nothing short of ridiculous.

We met with Mr. Counihan on January 9th. He told us repeatedly that he wanted to make sure we got the information we requested. Of course, it is not a surprise that last night the Administration came out with another enrollment update. So we hope the witness today answers some basic questions, like how many people were automatically enrolled in their health care plan; how many Americans actively use the health care law and how many are now passive participants in what the law forces them to do; how many of them were automatically enrolled in another plan; and a host of other questions we hope to get answered.

Of those who automatically enrolled, did CMS place people in new plans if their old plans were no longer available? Who made that decision? How was the new plan chosen? Was any analysis done of whether these new plans had different benefits? Was any analysis done of whether an individual would need to see a different doctor?

We are still seeing problems with Healthcare.gov. Last week the Administration announced the Website had generated 800,000 incorrect information to Americans, and obviously that will impact their tax status. That is nearly 10 percent of the people who used Healthcare.gov received incorrect data and incorrect information.

And for the 50,000 people who already filed their taxes, the IRS just said last week, don t worry about it. This is outrageous considering how often the IRS has bemoaned their budget and inability to collect tax dollars.

Finally, since the President's immigration announcement, we have learned that illegal immigrants can now potentially obtain tax refunds they are not entitled to, and maybe even potentially participate in our election process.

So those are the questions, too, we want to ask Mr. Counihan today. So we view this as an important hearing. We are pleased to have you here and we are hopeful you will answer some of the questions that we have been trying to get answers to for now over 3 months.

With that, I would yield to the ranking member, the gentleman from Pennsylvania, for an opening Statement, and then we will get right to Mr. Counihan s testimony.

Mr. CARTWRIGHT. Thank you, Mr. Chairman, for holding today s hearing.

I would like to welcome our witness today, Mr. Counihan. I thank you for appearing before our subcommittee.

There is good news and bad news about the ACA. I know my colleagues are adept at sharing all the bad news about the ACA, but I want to highlight some of the good news, if I may.

The 2015 open enrollment period was a success, with a record 11.4 million Americans selecting marketplace plans or automatically re-enrolling in quality affordable coverage as of February 15. In my home State of Pennsylvania, 471,930 people selected a plan or were automatically re-enrolled by the end of the most recent open enrollment period.

These strong open enrollment numbers, both across the Country and in my home State, show that the ACA seems to be working and continues to benefit millions of Americans. Insurance companies are joining the marketplace in significant numbers, offering greater plan choice to consumers. There are over 25 percent more insurers participating in the marketplace in 2015 than there were in 2014. Ninety-one percent of consumers can now choose to purchase plans from three or more insurers, up from 74 percent in 2014. And consumers are able to pick from an average of 40 health plans for 2015 coverage.

I also want to say the ACA appears to be helping to reduce premium cost increases in the individual market. In 2015, premiums for the benchmark, or, that is, the second lowest cost, Silver plan, will increase by only 2 percent, of course, far below the historic trend of double digit premium increases that we all endured throughout the last 15 years or so.

Since ACA open enrollment started in 2013, Medicaid and the Children's Health Insurance Program enrollment has increased by 10.1 million. The ACA has also reduced the number of uninsured people across our Country. Because of this law, we have seen the

largest decline in the uninsured rate since the early 1970's, and people who care about keeping hospitals open in your communities will want to note that. The lower the rate of uninsured, the healthier our hospitals will be.

According to the CBO, the Congressional Budget Office, the combined effect of the ACA coverage expansions has been to extend coverage to 12 million previously uninsured in 2014. In 2015, CBO estimates that 19 million uninsured Americans will be covered. Thanks to the ACA, millions of young adults, many of whom might have otherwise been uninsured, have been able to stay on their parents health plan, 129 million Americans with pre-existing conditions can no longer be denied coverage or charged higher premiums, and more than 100 million individuals no longer have an annual or life-time limit on their coverage, providing the kind of peace of mind that they will not go bankrupt if diagnosed with cancer or some other kind of serious illness.

On February 20, CMS announced an additional special enrollment period, from March 15, 2015 through April 30, 2015, for taxpayers affected by the individual shared responsibility payment. I am pleased that CMS is taking additional steps to help those individuals who were unaware of the penalty for not having coverage.

Now, earlier this month, House Republicans voted for the fifty-sixth time to repeal or weaken the ACA. But they have yet to offer concrete legislation that would serve as an alternative to the consumer protections and cost savings reforms that the law has already brought to millions of Americans.

The evidence is clear. The ACA is improving the lives of Americans nationwide as a whole, including the constituents of all of the members of this subcommittee who are already receiving important benefits under the law. It is time for us all to stop these constant attacks and focus instead on working together more effectively and efficiently to implement this new American law.

I thank the chairman again and look forward to this hearing and our witness's testimony.

Mr. JORDAN. I thank the gentleman from Pennsylvania. I would just point out that they are not attacks, it is facts. Eight hundred thousand people got notices that were inaccurate. People are being automatically re-enrolled in plans that they didn't opt into and may be different from the ones that currently exist. And that is the information we are trying to get at. It would be nice if we had some cooperation from Mr. Counihan and his folks.

Without objection, the chair is authorized to declare a recess at any time, and we will hold open for five legislative days the record for any members who would like to submit a written Statement.

I am pleased to welcome our witness today, Mr. Kevin Counihan, who is the Director of Marketplace, Chief Executive Officer of the Center for Consumer Information and Insurance Oversight, the Centers for Medicaid and Medicare Services.

Pursuant to all rules, we swear in our witnesses, so if you would please stand, Mr. Counihan, raise your right hand. Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

[Witness responds in the affirmative.]

Mr. JORDAN. Let the record show that the witness answered in the affirmative.

With that, you are recognized for 5 minutes. We have your written Statement, so every member has that, Mr. Counihan, but you have 5 minutes now for an oral Statement, then we will get right to questions. So the floor is yours.

WITNESS STATEMENT

STATEMENT OF KEVIN COUNIHAN

Mr. COUNIHAN. Good morning, Chairman Jordan, Ranking Member Cartwright, and members of the committee. It is an honor to appear here today to answer your questions about CMSs continuing efforts to provide affordable, high-quality health care to the Americans we serve.

I joined CMS last September as CEO of the Health Insurance Marketplace after 30 years of experience in the health care industry. I worked in senior roles at three private health insurance companies. I was president of a health insurance exchange and most recently was CEO of AccessHealthCT, the State of Connecticut s health insurance exchange.

I am pleased that the Affordable Care Act is making a real difference in the lives of consumers. Since the open enrollment period began last year, November 15th through February 15th, about 11.4 million Americans selected a plan or were automatically re-enrolled in States using Healthcare.gov or through State Marketplaces.

Yesterday we provided updated data on plan selections in States using the Federal facilitated Marketplace which shows that approximately 8.84 million consumers who selected a plan or who were automatically re-enrolled through the Healthcare.gov platform. The number of uninsured in the United States fell by an estimated 10 million since the start of open enrollment in 2013. The Nation's uninsured rate is now at or near the lowest level recorded in five decades of data.

CMS is constantly working to increase value to consumers by providing more affordable choices and improving the customer experience. We added 25 percent more issuers participating in the Marketplace in 2015; provided consumers with an average of 40 health plans to choose from, up from 30 last year. About 8 in 10 consumers in the 37 States using Healthcare.gov received, on average, a $268 monthly tax credit.

Over the last several years, CMS has been working with the IRS to plan for tax season and to provide outreach and education on the new tax filing requirements to individuals and tax filing preparers. About three-quarters of tax filers simply need to check a box to show that they had health coverage for all of 2014. The remaining taxpayers will need to take different steps, like claiming an exemption if they could not afford insurance, or paying a fee if they could but chose not to get covered.

Those with the Marketplace coverage are receiving new forms in the mail from the Marketplace, Form 1095-A, used to reconcile their up-front financial assistance. This is the first time Americans will be working through this new process, and we are prepared for

the inevitable challenges. While the vast majority of consumers received correct 1095-A forms, some received a form that contained an incorrect calculation. This affects less than 1 percent of all tax filers and is being fixed so that, beginning next week, those consumers can access a new tax form. We conducted a robust outreach effort to give consumers information needed.

The Administration is committed to providing the information and tools tax filers need to understand the new requirements. Individuals who cannot afford coverage or who meet other conditions may receive an exemption from the shared responsibility payment.

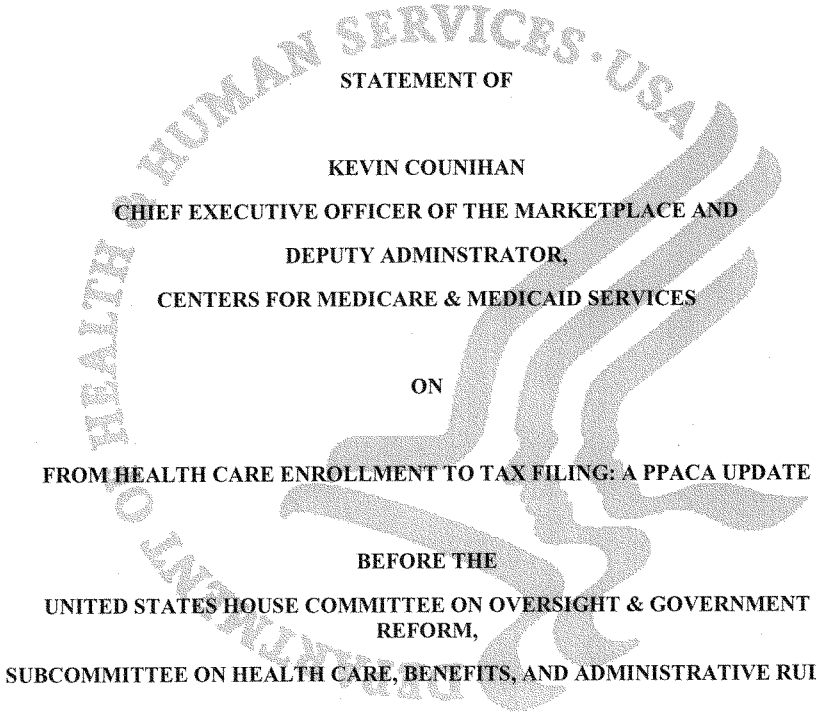
We recently launched a tool on Healthcare.gov to help consumers who did not have insurance last year determine if they qualified for an exemption. This tool will help consumers determine which exemptions they may be eligible for and how to apply for exemptions, whether through the Marketplace or through their tax return.

CMS is also providing a special enrollment period in States which use the federally facilitated Marketplace for individuals and families who did not have health coverage in 2014 and are subject to the fee when they file their 2014 taxes. The special enrollment period for March 15th to April 30th will allow individuals and families to buy coverage through the Marketplace.

As I mentioned, having been involved in both the State exchange and private exchanges prior to coming to Washington, I have seen how powerful the private sector companies can be in competing for consumers business. I have learned from my experiences that communication and collaboration is key. If anyone has suggestions on how to improve our systems and our programs, I would appreciate hearing from you personally, and I look forward to working with you.

We are proud of what we have accomplished so far and the difference the high-quality, affordable health care coverage is making in the lives of people throughout the Country. Thank you for your time, and I look forward to your questions.

[Prepared Statement of Mr. Counihan follows:]



STATEMENT OF

KEVIN COUNIHAN

CHIEF EXECUTIVE OFFICER OF THE MARKETPLACE AND

DEPUTY ADMINSTRATOR,

CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

FROM HEALTH CARE ENROLLMENT TO TAX FILING: A PPACA UPDATE

BEFORE THE

UNITED STATES HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM,

SUBCOMMITTEE ON HEALTH CARE, BENEFITS, AND ADMINISTRATIVE RULES

FEBRUARY 26, 2015

House Committee on Oversight & Government Reform,

Subcommittee on Health Care, Benefits, and Administrative Rules

Hearing on "From Health Care Enrollment to Tax Filing: A PPACA Update"

February 26, 2015

Good morning, Chairman Jordan, Ranking Member Cartwright, and members of the Committee. I appreciate the opportunity to update you on the Centers for Medicare & Medicaid Services' (CMS') continuing work to implement the Affordable Care Act and provide consumers with affordable access to high quality health coverage.

I joined CMS last September as the CEO of the Health Insurance Marketplace after 30 years' of experience with health insurance companies and public and private health care exchanges. My background includes senior roles at three private health insurance companies and as CEO of AccessHealthCT, the state of Connecticut's Health Insurance Exchange. Based on my previous experiences, I know that, whether public or private, a complex, large scale project like the Health Insurance Marketplace requires a multi-year implementation. Building a Marketplace takes time and patience, and there will certainly be learning experiences along the way.

We have now completed the second open enrollment period for the Health Insurance Marketplaces. During open enrollment, about 11.4 million Americans selected Marketplace plans or were automatically re-enrolled, including about 8.6 million through the HealthCare.gov platform, and – based on preliminary data provided to us through the State Based Marketplaces – about 2.8 million through these state Marketplaces. We are optimistic that we will meet or exceed the HHS projection of 9.1 million people signed up and paying their premiums for 2015. We are also keenly aware of the challenges we face as a new program of this scale matures. CMS will continue to learn and improve our systems that provide consumers with more coverage options, affordable rates, and a secure, consumer friendly online Marketplace.

The Affordable Care Act is Working

The Affordable Care Act is working: millions of Americans who were previously uninsured now have access to affordable, high-quality health care. The number of uninsured in the United States

fell by an estimated 10 million people since before the start of open enrollment in 2013.[1] Pre-existing conditions no longer preclude individuals from gaining health insurance, and consumers have better access to comprehensive, affordable coverage. Consumers now have the comfort of knowing that if their employment changes or they lose coverage for any reason, they can purchase affordable coverage through the Marketplace—regardless of their personal health history.

Health insurance exchanges like the Marketplace, whether public or private, are essentially free market distribution channels to allow issuers to compete on price, quality, and value. The creation of a successful, viable health insurance market has benefits for all Americans no matter where they get their health insurance. For example, reductions in the uninsured rate generally mean that doctors and hospitals provide less uncompensated care, the costs of which are often passed along to consumers and employers who pay premiums for health coverage.[2] And new pools of people buying insurance means insurers have an opportunity to grow their business by competing to provide better access to high-quality, affordable health plans, those that consumers are used to in any competitive marketplace.

Recent years have seen historically-low growth in overall health spending, with health care price inflation remaining at low levels not seen in decades and Medicare spending per beneficiary essentially unchanged in fiscal year 2014.[3,4] Similar trends are playing out in the employer-based insurance market: according to the Kaiser Family Foundation, the average premium for employer-based family coverage rose just three percent in 2014, which tied for the smallest increase since the survey began in 1999.[5] Slow growth in underlying per capita costs has helped drive exceptionally low growth in aggregate national health expenditures in recent years:

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[1] http://www.whitehouse.gov/blog/2014/12/18/2014-has-seen-largest-coverage-gains-four-decades-putting-uninsured-rate-or-near-his

[2] http://www.aspe.hhs.gov/health/reports/2014/UncompensatedCare/ib_UncompensatedCare.pdf

[3] http://www.whitehouse.gov/blog/2014/12/03/historically-slow-growth-health-spending-continued-2013-and-data-show-underlying-slo

[4] http://aspe.hhs.gov/health/reports/2014/MedicareCost/ib_medicost.pdf

[5] http://kff.org/health-costs/press-release/employer-sponsored-family-health-premiums-rise-3-percent-in-2014/

national health care expenditures grew just 3.6 percent in 2013 and have been below 4.1 percent for five consecutive years, the slowest rates since recordkeeping began in 1960.[6]

The vast majority of Americans get their health insurance at work, and that has not changed. However, because of the Affordable Care Act, that coverage is stronger and more secure. Lifetime and annual dollar limits are now a thing of the past, and 105 million Americans had lifetime caps on their coverage lifted. Tens of millions of people have new access to preventive services with no cost-sharing. And consumers have new tools to appeal decisions made by their insurance companies.

Progress in the Second Open Enrollment

The progress in the second Marketplace Open Enrollment resulted from the work of many, learning the lessons from the program's first year of implementation. For this Open Enrollment, CMS set out to increase value to consumers with more choices, better information, and an improved consumer experience, while providing a mechanism for consumers who were satisfied with their current Marketplace coverage to easily re- enroll. We provided consumers with ready access to updated information about the Marketplace, and new decision support tools. We also publicly provided weekly snapshots of preliminary data that included an analysis of those who have selected a plan, submitted an application, reached out to the Marketplace call center or visited HealthCare.gov or CuidadoDeSalud.gov to shop or learn more about their health coverage options. We have provided monthly enrollment reports following the completion of each of the first two months of open enrollment, and with the end of Open Enrollment, look forward to providing additional data as soon as it is validated.[7]

We have seen great enthusiasm and interest from both current and new Marketplace consumers. In the second Open Enrollment period that ran from November 15, 2014, through February 15, 2015, about 11.4 million people selected a plan or were automatically re-enrolled in states using HealthCare.gov and through State Marketplaces. Of the 11.4 million, 8.6 million consumers selected a plan or were automatically re-enrolled in the 37 states that use the

[6] http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html

[7] http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/Jan2015/ib_2015jan_enrollment.pdf, http://aspe.hhs.gov/health/reports/2014/MarketPlaceEnrollment/Dec2014/ib_2014Dec_enrollment.pdf

HealthCare.gov platform. In addition, preliminary analyses of data provided by State-Based Marketplaces show that about 2.8 million consumers selected plans or were automatically re-enrolled between November 15 and February 15 in those states. The Marketplace's work continues beyond the enrollment deadline of February 15. Consumers can come back and enroll in plans following a qualifying life event such as moving to a new state, loss of a job, and marriage. People who were in line to purchase coverage on February 15 and could not complete their plan selection had until February 22 to enroll in a health insurance plan, and we encouraged these consumers to take advantage of that extended time period.

Improved Value and Consumer Experience

Consumers are finding affordable coverage options, a greater choice of plans, and coverage that meets their care needs, with eight in 10 consumers in the 37 states using HealthCare.gov receiving, on average, a $268 monthly tax credit.[8] In fact, because of new choices and more competition in the Health Insurance Marketplace, many consumers were able to shop for more affordable options during the second Open Enrollment period. With 25 percent more issuers participating in the Marketplace in 2015, more than 90 percent of consumers were able to choose from three or more issuers—up from 74 percent in 2014. Consumers could choose from an average of 40 health plans for 2015 coverage—up from 30 in 2014, based on county-level data.[9]

The shopping and enrollment process is simpler, faster, and more intuitive for consumers. People can view plans available in their areas without logging in or filling out applications. With a new streamlined application for most new consumers, we reduced the number of application screens from a maximum of 76 to 16, with fewer clicks to navigate through the questions for most consumers. In addition, consumers can shop and enroll in the way that best meets their needs: on a smartphone, tablet, or computer; by calling the call center; or with local, in-person assistance that includes Navigators, Certified Application Counselors and other assisters, as well as agents and brokers.

The Federally-facilitated Small Business Health Options Program (FF-SHOP) Marketplace now allows qualifying employers or their brokers to find, compare, purchase, and enroll in 2015

[8] http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/APTC/ib_APTC.pdf
[9] http://aspe.hhs.gov/health/reports/2015/premiumReport/healthPremium2015.pdf

SHOP medical and dental coverage, as well as determine their eligibility for tax credits, entirely online through HealthCare.gov. Employees are able to view new choices of insurance from their employer and enroll online through HealthCare.gov. Though the Open Enrollment period for individuals and families is now closed, monthly enrollments are available throughout the year for small employers to sign up for 2015 SHOP coverage.

Security Remains a Top Priority

Throughout our planning and preparation for the second Open Enrollment period, CMS made the security of the Marketplace and the Information Technology (IT) systems that support it a top priority. In addition to daily operational security testing, we conducted a comprehensive end-to-end Security Control Assessment that meets Federal and industry standards before the start of the second Open Enrollment period. CMS addressed the 22 technical recommendations in the September 16th GAO report, "HealthCare.gov: Actions Needed to Address Weaknesses in Information Security and Privacy Controls"[10] and has also completed work to implement the six general recommendations made in the report.

There are inherent risks for every IT system, and while no website is immune from attempted attacks, CMS will continue to maintain and strengthen the security of HealthCare.gov. CMS conducts continuous monitoring using a 24/7, multi-layer IT professional security team, added penetration testing, and ongoing testing and mitigation strategies implemented in real time. These layered controls help protect the privacy and security of PII related to the Federally-facilitated Marketplace. When consumers fill out their online Marketplace applications, they can trust that the information they are providing is protected by stringent privacy and security standards.

Preparing for the 2015 Tax Season

The 2015 tax season is the first time individuals and families will be asked to report basic information regarding health coverage on their tax returns. For the vast majority of tax filers - about three-quarters—meeting this new requirement will be as simple as checking a box to show they had health coverage for all of 2014. The remaining taxpayers—about one quarter—will

[10] http://www.gao.gov/assets/670/665840.pdf

need to take different steps, like claiming an exemption if they could not afford insurance, paying a fee if they could afford health insurance but chose not to get covered, or new statements sent out by the Marketplace to fill out their tax forms. It is expected that three to five percent of all taxpayers benefited from advance payments of the premium tax credit to help lower the costs of their Marketplace premiums in 2014. These individuals will need to reconcile those credits in order to ensure that they received the correct amounts. Those with Marketplace coverage will receive new forms in the mail from the Marketplace—Form 1095-A—that they will use to reconcile their upfront financial assistance.

In preparation for the 2015 tax filing season, CMS has worked closely with the Internal Revenue Service (IRS) to provide resources to tax filers with the information they need to get their questions answered.[11] We are also providing outreach and consumer education by working with community organizations on the ground, creating partnerships with top tax preparers, and directly contacting Marketplace enrollees through email, phone, and text messages.

This year, many tax preparers and organizations updated their online tools to reflect the new Affordable Care Act requirements with the goal of helping consumers easily complete a timely and accurate tax return. Part of our outreach effort involves coordinating efforts with nonprofit organizations and some of the Nation's largest tax preparers. For example, one preparer reports that it has trained Affordable Care Act specialists to help taxpayers understand how the law may impact their taxes. Another preparer has Affordable Care Act-dedicated customer care agents to assist consumers and has also made available online a series of videos to help Americans understand this year's new tax requirements. In addition, we are partnering with many non-profit organizations that work with the IRS' Volunteer Income Tax Assistance program to offer free tax assistance to consumers in their communities.

CMS recognizes that this is the first time Americans will be working through this process, and similar to the first year of Open Enrollment in the Marketplace, there will be bumps along the way. This tax season, while the vast majority of consumers received the correct 1095-A form, some consumers received a form that contained an incorrect monthly premium amount of the second lowest cost Silver plan. An incorrect form does not mean that a taxpayer's advance tax

[11] These resources can be found at www.IRS.gov/ACA or www.healthcare.gov/taxes.

credit was calculated incorrectly – this is an error in what was printed on the form. This affects less than one percent of all tax filers, namely those who enrolled in the Marketplace, received incorrect versions of Form 1095-A, and received advance premium tax credits or claimed premium tax credits. This does not affect the vast majority of tax filers, for example, who just have to check a box, or file an exemption. CMS identified this mistake, and has moved forward to get all consumers correct 1095-A forms by early March. Consumers can log into their Marketplace accounts on HealthCare.gov to check the status of their forms those with affected forms will receive a phone call from the Marketplace by early March, in addition to letters and emails with additional information about the status of their form.

The Marketplace is prepared to assist consumers if they have questions about the information on their forms or if they find information that needs to be corrected. Just as we have in this case, CMS is committed to correcting any problems as they arise, and learning from this experience to improve the process for consumers in the future.

While those who can afford to buy health insurance and choose not to may have to pay a fee, individuals who cannot afford coverage or meet other conditions may receive an exemption.[12] It is expected that 10 to 20 percent of taxpayers were uninsured for all or part of 2014 and will claim an exemption from the requirement to have coverage. A smaller fraction of taxpayers, an estimated two to four percent, will pay a fee because they made a choice to not obtain coverage they could have afforded and are not eligible for an exemption. The Administration is committed to providing the information and tools tax filers need to understand the new requirements. HHS is working to make sure people know exemptions are available and is committed to ensuring that if someone qualifies, the process of receiving an exemption is simple and easy. We recently launched a tool on HealthCare.gov to help consumers who did not have insurance last year determine if they qualify for an exemption. The tool will help consumers determine which exemptions they may be eligible for and how to apply for exemptions, whether through the Marketplaces or their tax return.

CMS also is providing a special enrollment period in states which use the Federally-facilitated Marketplaces for individuals and families who did not have health coverage in 2014 and are

[12] https://www.healthcare.gov/fees-exemptions/exemptions-from-the-fee/

subject to the fee when they file their 2014 taxes. This special enrollment period, from March 15 to April 30, will allow those individuals and families who were unaware or didn't understand the implications of this new shared responsibility payment to enroll in 2015 health insurance coverage through the Marketplace.

Conclusion

Since the passage of the Affordable Care Act, millions of Americans now have access to high quality, affordable health care coverage, and we are controlling the growth of health care costs. From the outset, we knew that implementation of the Affordable Care Act would be a multi-year process, and we learn daily how to improve our operations and enhance the consumer experience by making the purchasing of health insurance easier and simpler for our customers. We are not perfect. We benefit from suggestions from customers, assisters, brokers, issuers, and other key stakeholders on ways to improve our operations to ensure the American people gain the peace of mind of health insurance coverage.

I thank you for the opportunity to update you on our efforts, and look forward to answering your questions.

Kevin Counihan
Chief Executive Officer of the Marketplace and
Deputy Administrator at the Center for Medicare and Medicaid Services

Kevin Counihan serves as the Chief Executive Officer of the Marketplace and the Deputy Administrator at the Center for Medicare and Medicaid Services (CMS). In his role as Marketplace CEO, Kevin is responsible and accountable for leading the federal Marketplace, managing relationships with state Marketplaces, and directing the Center for Consumer Information and Insurance Oversight (CCIIO), which regulates health insurance at the federal level.

Kevin comes to the Department after most recently serving as the CEO of AccessCT, the state of Connecticut's health insurance exchange, since July 2012. As the AccessCT CEO, Kevin led the successful implementation of the state's marketplace where enrollment exceeded expectations.

Kevin has over 30 years' experience in the health care and insurance exchange industries. Prior to his Connecticut appointment, he held the position of President of CHOICE Administrators in California, a private health insurance exchange that serves 10,000 employer groups and their members. Prior to CHOICE Administrators, Mr. Counihan served as the Chief Marketing Officer (CMO) for the Commonwealth of MA Health Insurance Connector Authority (also known as the MA Health Connector). As CMO at the Health Connector, Kevin led a marketing campaign which set the bar for inventive outreach in local communities, including partnerships with strong local brands like the Red Sox. Prior to that position, Kevin was Senior Vice President of Sales and Marketing for Tufts Health Plan of Massachusetts from 1993 to 2005. He also served as regional Vice President for Cigna Corp., and has worked as an adjunct professor of health policy at Northeastern University since 2009.

Kevin holds an undergraduate degree from the University of Michigan and an MBA in finance and marketing from Northwestern University's Kellogg School of Management.

Mr. JORDAN. Thank you.

The gentleman from North Carolina, Mr. Meadows, is recognized for 5 minutes.

Mr. MEADOWS. Thank you, Mr. Chairman.

Thank you for your opening Statement. You are gifted with your words. I guess my concern, and you know that I have a concern, and I am going to share this with the ranking member, Mr. Cartwright, because even though we are on different sides of the aisle, we believe that this should not be political. Indeed, I met with you personally, told you I didn't want it to be political; I wanted to get the information.

So I guess my question is why do we still not have the information we requested after 23 emails, seven phone calls, one personal meeting, countless other indirect contacts that we have had, two text messages? I have been reaching out for over 70 days. And it is real simple: we haven't gotten the information that you have had. So you have been working through the information, so you have not had the re-enrollment numbers in order to comply, is that correct?

Mr. COUNIHAN. That is correct. I will wait until you are done.

Mr. MEADOWS. No, that is the question. You are under oath. So you have not had the re-enrollment numbers that I have requested multiple times?

Mr. COUNIHAN. What is critical, Congressman, is that the information that we provide you, or anyone on this committee, be accurate, be verified, be validated, and make sure that it is correct before submitting to you.

Mr. MEADOWS. So is it your testimony here today that you have not had those numbers until today? Or yesterday.

Mr. COUNIHAN. Correct. You and I spoke yesterday and I gave you numbers over the phone, and that is correct. We have numbers, but they are not verified, fully validated, fully vetted that I would give to you.

Mr. MEADOWS. Well, why would you not give me numbers, as I have requested them 23 times? Why would you not give me numbers? Because then I made a simple request. I said just send me the batch information. I had to go through and dig through this and just ask for the batch information that you were giving to other insurance companies. Why did you not give me that?

Mr. COUNIHAN. Can I respond? I feel a personal accountability in responding to you. I think you know that; you and I have talked. I am committing to giving you information that——

Mr. MEADOWS. Why do we have to have a hearing in order for me to get a phone call the day before to get partial, it is not even all the information; I only got a little bit of it. So why would we have to wait that long?

Mr. COUNIHAN. Congressman, as I said, I am very committed to getting the information, but it has to be accurate. It has to be tested.

Mr. MEADOWS. All right, so let me ask you this.

Mr. COUNIHAN. It has to be one that stands up because, if it is not, that creates a different problem.

Mr. MEADOWS. All right, so let me ask you a more difficult question, then. If indeed you were afraid to give me those numbers be-

cause you indeed say you didn't have them, and that you were verifying the numbers and that you were concerned that they were not accurate, did you give re-enrollment numbers to anybody else outside of CMS? And be careful, because you are under oath.

Mr. COUNIHAN. I understand that. What I am committing to you, Congressman, is that any information that I give you to a request——

Mr. MEADOWS. That is not my question.

Mr. COUNIHAN [continuing]. Is verified and validated.

Mr. MEADOWS. That may be a good answer to a question I didn't ask. Did you provide it to anybody outside of CMS?

Mr. COUNIHAN. I am giving you information, Congressman, that is verified and validated. I have enormous respect for you. I understand your goals and I appreciate what you are trying to do.

Mr. MEADOWS. So yes or no?

Mr. COUNIHAN. I am telling you, Congressman, that no information I am giving to you is not going to be fully vetted and fully verified.

Mr. MEADOWS. That is not my question. Are you going to answer the question? Did you give it to anybody outside of CMS?

Mr. COUNIHAN. I am repeating my answer, Congressman, with deepest respect. I am giving you information when it is verified and fully validated.

Mr. MEADOWS. All right, well, let me finish it. I have information that would suggest that you gave it to other people out of CMS. Yes or no, is that accurate?

Mr. COUNIHAN. Congressman, I am not familiar with the information that you may have, but——

Mr. MEADOWS. Did you not send re-enrollment numbers, did you not send re-enrollment numbers to health care providers on December 18th? Did you not send that to them?

Mr. COUNIHAN. Congressman, I have to go back and check correspondence from December 18th. I do not have recollection about that.

Mr. MEADOWS. All right. Did you give re-enrollment numbers to the White House?

Mr. COUNIHAN. Congressman, I have to go back and check this. I am not——

Mr. MEADOWS. You know what, Mr. Counihan?

Mr. COUNIHAN. I am not familiar with this.

Mr. MEADOWS. Let me just tell you, and I will conclude with this Statement, I guess. Either CMS intentionally gave misleading information to insurers, insurance companies across the Country on December 18th or you lied to me and said that you didn't have it. Which is it? Either you intentionally misled them, because they got it, or you lied to me. Which is it?

Mr. COUNIHAN. Congressman, I have to check the facts of what you are alleging.

Mr. MEADOWS. Well, you have counsel behind you. She shows up at every one of these meetings. Ask her to check on it while you are here and we would love to hear your answer.

I yield back.

Mr. COUNIHAN. Congressman—OK.

Mr. MULVANEY [presiding]. The gentleman s time is expired.

Now recognize the gentleman from Pennsylvania for 5 minutes, the ranking member.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Well, Mr. Counihan, I want to say, at the outset, that Mr. Meadows and I agree on a great many things here in the U.S. House of Representatives, and one of them is that we want transparency and accountability in the Government; that is why we have put in to serve on this here committee, because this is a committee that is charged with the responsibility of ferreting out problems in the Government. And we want to see that when somebody on the committee, particularly Mr. Meadows, when he calls you, you call back. Has that been happening; when he calls you, do you call back?

Mr. COUNIHAN. I believe it has been happening. We had a conversation yesterday as a followup to a conversation that we have been having since December. I value Congressman Meadows quite a bit.

Mr. CARTWRIGHT. And I want to also say for the record if Mr. Meadows is having a hard time getting ahold of you, I want him to call me and I will help him get ahold of you.

Mr. MEADOWS. Would the gentleman yield?

Mr. CARTWRIGHT. I certainly will.

Mr. MEADOWS. I would be glad to give you a timeline. We will share it with you and I will let you make your own decision on whether he has been responsive or not. I sent him a text message the last time and said if he is not going to be willing to provide us with the numbers, there is no sense going through that. But, Mr. Cartwright, I trust you and I will give you the timeline.

Mr. CARTWRIGHT. Thank you. Reclaiming my time.

I think that it would make sense for Mr. Meadows and me to work together to make sure you are being fully transparent and accountable, Mr. Counihan.

There was a comment, though, that was made about it took a hearing to be scheduled before you would make a phone call. I just want to make it clear. Were you subpoenaed to come to today s hearing or did you come voluntarily, of your own will, Mr. Counihan?

Mr. COUNIHAN. I came voluntarily.

Mr. CARTWRIGHT. All right. And forgive me if I misState this, but it seems to me that, when we are talking about numbers and talking about testimony under oath, as you are, you understand you are under oath today, right?

Mr. COUNIHAN. Yes.

Mr. CARTWRIGHT. And you have understood that very plainly that, when you come to our committee, you are going to be under oath, so we are going to expect exactitude in the numbers that we get from you.

Mr. COUNIHAN. Yes.

Mr. CARTWRIGHT. Is that one of the concerns that has been driving your reticence about sharing particular numbers, that you want to make sure they are exact and precise when you testify to them under oath?

Mr. COUNIHAN. Yes.

Mr. CARTWRIGHT. All right. Now, I want to visit this question about the erroneous tax information that was sent out, because

that is a concern of mine as well. The agency has sent erroneous tax information to roughly 800,000 tax filers who receive coverage through the federally facilitated Marketplace in 2014. It is my understanding that these tax filers received erroneous 1095-A forms. Is that correct?

Mr. COUNIHAN. Correct.

Mr. CARTWRIGHT. And these are the people that you said constituted less than 1 percent of the filers?

Mr. COUNIHAN. Correct.

Mr. CARTWRIGHT. OK. How did it happen?

Mr. COUNIHAN. You know, to the best of our understanding so far, and we are still doing research into this, it appears that there was an unfavorable interaction between two pieces of software code, and upon identifying that we began our fix.

Mr. CARTWRIGHT. OK. So those of us that have employer-sponsored coverage or government coverage such as Medicare or Medicaid are not affected by this.

Mr. COUNIHAN. Correct.

Mr. CARTWRIGHT. And would you take this moment, Mr. Counihan to explain to us now what the agency is doing to alert tax filers who received the erroneous 1095-A forms about what they need to do to proceed with filing their tax returns?

Mr. COUNIHAN. We are doing quite a bit. We take the issue of the disruption caused by these incorrect forms very, very seriously, and it wouldn't matter whether it were one tax filer or 820,000. We jumped on this issue very fast to uncover it. We have created new tools on our Website, Healthcare.gov, that help people both understand whether they were impacted by it, how to calculate the correct benchmark plan, that second lowest cost, Silver. We have trained our call center representatives to take calls from recipients so that they can get the answers that they need. We have made robocalls out, we have sent letters, we have sent emails. We have had a broad-based communication effort.

Mr. CARTWRIGHT. OK. Well, Mr. Counihan, I want to express, before I yield my time, I am disappointed that the agency made this kind of mistake at such a critical time. This is an unforced error that provides fodder for those who want to tear down the ACA. But I want to remind my colleagues that it doesn't detract from the fact that millions of Americans now do have access to life-saving healthcare coverage that they did not previously have.

With that, I yield back, Mr. Chairman.

Mr. MULVANEY. I thank the gentleman.

We now recognize the gentleman from Tennessee, Mr. DesJarlais.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Good morning, Mr. Counihan.

Mr. COUNIHAN. Morning.

Mr. DESJARLAIS. It is good to have somebody here that is concerned about exact and precise numbers, because we have had a lot of trouble getting accurate numbers when it comes to the Affordable Healthcare Act. You gave a pretty resounding, rosy testimony in terms of how the healthcare law is working, but it doesn't seem to coincide with a lot of the people that I hear from, so I was hoping you could help clear up some numbers.

You had indicated that the uninsured rate is at the lowest point in the recorded history of the Country, is that correct?

Mr. COUNIHAN. I said that the uninsured level has dropped significantly.

Mr. DESJARLAIS. I think you followed with saying that it was the lowest that had been recorded, and I was wondering how you came to that number.

Mr. COUNIHAN. Just to be precise, sir, what I said was the uninsured rate is now at or near the lowest level recorded across five decades of data.

Mr. DESJARLAIS. OK, so pretty good. How did you get that data? Where did it come from? How many people are insured in this Country, what do we have, 310, 330 million people?

Mr. COUNIHAN. About 330 million people. To be frank with you, sir, I need to get back to you with that.

Mr. DESJARLAIS. OK. How many people were uninsured when this law first came into effect, when they were selling it to the American people?

Mr. COUNIHAN. Sir, I need to do the same.

Mr. DESJARLAIS. Well, I mean, roughly. You don t have to be precise. The President was throwing out numbers, 30 million, 40 million were uninsured.

Mr. COUNIHAN. You know, sir, I am not trying to be difficult.

Mr. DESJARLAIS. Did you prepare at all for this hearing?

Mr. COUNIHAN. Yes.

Mr. DESJARLAIS. I listened to your answers to Mr. Meadows, and it just astounds me that you can't remember whether or not you gave information to CMS or to the White House. That is your testimony, that you just don't remember?

Mr. COUNIHAN. No, it is not. What I simply want to say is that you have asked me a question that has to do with data. I respect that question. I would like to respond with a precise answer.

Mr. DESJARLAIS. OK. If people don't sign up for the healthcare law, they are going to pay a tax penalty here soon, right?

Mr. COUNIHAN. Only if they do not qualify for an exemption.

Mr. DESJARLAIS. So it is kind of hard to get the number of uninsured until we see how many people have to pay a penalty, because we have heard the President said 30 or 40 million people were uninsured in this Country; now you are saying 10 or 11 million have insurance. And we have 330 million people, but, yet, is it your testimony that about 90 percent of the people who have signed up are getting subsidies?

Mr. COUNIHAN. What I would say based on our enrollment is roughly 87 percent of people that enroll in the Marketplace——

Mr. DESJARLAIS. OK, so roughly 9 out of 10 are getting subsidies. And we have 330 million people. You can't tell me how many had insurance and how many don't have insurance, but you are saying we have the lowest insurance rate. So you are not really helping me with your exact and precise numbers. But what we are seeing is people paying about two to 4,000 more for premiums, paying much higher deductibles. And yet the President promised most people's premiums would drop 2500. So it is clear at this point we were sold a bill of goods. Do you agree with that?

Mr. COUNIHAN. With deep respect, I do not agree with that, and the reason I don't is because I have been doing this between States and now here in this job for almost 9 years, and I have seen the impact of people getting access to coverage that is more affordable for them, that——

Mr. DESJARLAIS. Well, you and I are talking to different people, but let's move on. Let's talk about some more exact and precise numbers. This month, HHS announced that you will terminate coverage for individuals who signed up in 2014 who have been unable to verify their citizen status, so that is about 200,000 individuals, right?

Mr. COUNIHAN. It appears that number is going to be less than that.

Mr. DESJARLAIS. OK. We have numbers that show up to 312,000 individuals should not be receiving coverage, so that is not correct?

Mr. COUNIHAN. Congressman, I would appreciate the opportunity to come back to you with precise numbers on all these questions.

Mr. DESJARLAIS. It sounds like you are going to have to come back, because you are certainly not ready today. First of all, how do these people sign up, what data do they need? Do they need a driver's license, a Social Security card? How can they sign up for healthcare if they are getting it illegally?

Mr. COUNIHAN. So an individual attests on their application to specific amounts of parts of information. We check that information against electronic data sources to verify its validity. There can be situations where that data is going to match; there will be situations where that data does not match. When the data does not match the verified sources, the trusted sources, it is up to that individual to provide the evidence that supports that they are legally eligible for coverage.

Mr. DESJARLAIS. So how do we get this money back? And let me ask a second question. With the President s executive order, with four to five million new people gaining access to Social Security cards and driver's licenses, probably the very information that it takes to get this healthcare coverage, how are you going to prevent that and how are you going to get that money back?

Mr. COUNIHAN. Congressman, I think the point is that we take self attestations, we verify them against proper data sources to make sure that they are accurate. If they are not verified, the applicant is required to provide proof, that in fact, it is true. If the proof is provided, they may maintain their coverage and the appropriate subsidies and such; if the proof is not provided——

Mr. DESJARLAIS. Bottom line is this law wasn't ready and it is never going to be ready.

I yield back.

Mr. MULVANEY. I thank the gentleman.

We now recognize the ranking member, the gentleman from Maryland, Mr. Cummings, for 5 minutes.

Mr. CUMMINGS. Thank you very much.

Mr. Counihan, we are very pleased to have you here. Despite strong evidence to the contrary, Republicans continue to claim that the Affordable Care Act is causing an increase in healthcare costs. However, multiple reports show that the growth of healthcare spending in the United States, in fact, slowing to historically low

levels. Thanks to the Affordable Care Act, we have seen the slowest growth in healthcare prices in nearly 50 years, and Congressional Budget Office estimates show that the ACA will reduce the deficit by about $100 billion over its first 10 years and a total of $1.7 trillion over the first two decades.

When we look at the benefits of it, of course, there are a lot of people who are staying well because they now have access to insurance and, therefore, medical care. There are people who have preexisting conditions that are now able to get treatment. So there are a lot of benefits to this very important law.

In December 2014, Mr. Counihan, the Centers for Medicare and Medicaid Services issued its national health expenditures report. Are you familiar with that report, sir?

Mr. COUNIHAN. I have heard of it. I am not familiar with the details of it.

Mr. CUMMINGS. Well, maybe some of this will be familiar to you. The report found that national health spending grew by just 3.6 percent in 2013, the lowest rate of growth since 1960. This is down from 4.1 percent growth in 2012. In your opinion, what factors are driving these low rates? The low rate of growth, that is.

Mr. COUNIHAN. Congressman, I would have to understand the report better before I responded.

Mr. CUMMINGS. OK. Are the Affordable Care Act's payment and delivery reforms, do you think that has been part of the explanation? I know you have to get back to me, but do you think that would be a part of it?

Mr. COUNIHAN. I do.

Mr. CUMMINGS. I want to go back to some questions that were asked of you earlier about certain data that you were questioned about whether you had released that data to the White House and then I think you were also asked about insurance companies. It sounds like you wanted to make sure, as far as the committee is concerned, that the data was properly vetted. And I agree with the ranking member and chairman of the subcommittee that we do have to get accurate information.

I guess, as I listened to you, I just have one question. If the information was released to others, is it done with a caveat? How does that work? And I know you said you need to get back to us, but I am just trying to figure out. I can understand definitely you making sure you deliver very accurate and up-to-date information to this committee, because, man, if you don't, next thing you know, you have big problems. But the question becomes are there circumstances where information is released to others? Is there a caveat if that happens? Or does it happen?

Mr. COUNIHAN. Sir, I have to look at the information that was provided that Congressman Meadows referred to this December 18th. I am not familiar with that report.

Mr. CUMMINGS. OK. So I am talking about just general information. In your experience, do you ever release information with a caveat, that this is not accurate, it still has to be vetted? I think that is a pretty reasonable question.

Mr. COUNIHAN. It is a reasonable question, and the answer to that question is that, depending on the circumstance involved, there may be internal information that is shared, but at all times,

when we would ever release information to you, to Congressman Meadows, to this committee, we would not do anything without having that information checked, triple checked, fully, fully verified.

Mr. CUMMINGS. So, again, do you ever release raw data without vetting to anybody else? Does that happen?

Mr. COUNIHAN. We have released on a weekly basis a snapshot report of how we do in our open enrollment period.

Mr. CUMMINGS. OK.

Mr. COUNIHAN. I assume this committee has received that.

Mr. CUMMINGS. OK. And so that data is not vetted, is that right?

Mr. COUNIHAN. No, that data is vetted.

Mr. CUMMINGS. All right. I see my time has expired.

Mr. MULVANEY. Thank the gentleman.

We need to take care of a housekeeping matter here. We have a new member to the full committee, Ms. Lujan Grisham from New Mexico. I ask, even though she is not part of the subcommittee, that she be permitted to participate today fully in this subcommittee. Without objection.

At this point, recognize for 5 minutes the gentleman from Georgia, Mr. Hice.

Mr. HICE. Thank you, Mr. Chairman.

Mr. Counihan, does your office obtain any supplemental funding from other areas within HHS or CMS?

Mr. COUNIHAN. Sir, I am not sure of the answer to that question. I need to respond back to you on that.

Mr. HICE. So you are not aware if there are any supplemental funds at all. Have you ever made a request for supplemental funding?

Mr. COUNIHAN. Sir, I have to get back to you with answers around supplemental funds.

Mr. HICE. Do you know if you have ever made a request for supplemental funding?

Mr. COUNIHAN. Sir, it is not coming to mind that I have made a request for supplemental funds, but I don't want to say anything that may not be true, so I please need to get back to you.

Mr. HICE. Sir, we are providing you with information that HHS provided us regarding transfers that were made last year, some $109 million that was transferred into program management to ensure that the CMS had operations of the Marketplace to support what they are doing. Are you aware that this money was transferred to help Marketplace operations?

Mr. COUNIHAN. Sir, I arrived in September of last year. I don't know the date or timing of when those requests or allocations may have been made. This was before my time.

Mr. HICE. Sir, I understand that, but you are the CEO.

Mr. COUNIHAN. My suspicion is it was before my time.

Mr. HICE. OK. This is your area of responsibility. So you are not aware at all of where $109 million supplemental funding came from?

Mr. COUNIHAN. I am not aware of that specific supplemental funding you have just referred to.

Mr. HICE. Well, let me ask you this way. Do you believe that it is appropriate for Healthcare.gov to receive money from the CDC?

Mr. COUNIHAN. Sir, I need to——

Mr. HICE. Well, it is there in front of you, provided by your own staff to us that that took place. Do you believe it is appropriate for money to come from NIH for Healthcare.gov?

Mr. COUNIHAN. The issue of supplemental funds, Congressman, is unfamiliar to me, and I would need to respond back to you upon——

Mr. HICE. Well, sir, would you believe that it should not be a strange subject to you, seeing that this is the area that you are responsible for?

Mr. COUNIHAN. I accept full responsibility for my offices and for the exchange. I am just unfamiliar with this issue of supplemental funding that you are referring to.

Mr. HICE. All right, sir. Are you familiar with Form 8962?

Mr. COUNIHAN. With that tax form?

Mr. HICE. With the tax form, yes, sir.

Mr. COUNIHAN. Yes, I am.

Mr. HICE. OK. CBS News referred to this as a mind-boggling form. Were you in any way responsible or helpful, if we can put it that way, to the IRS for this form and the information?

Mr. COUNIHAN. The creation of IRS forms is not in my bailiwick.

Mr. HICE. But, according to your testimony, you work closely with the IRS to provide information they needed to develop some of these forms, is that correct?

Mr. COUNIHAN. Our offices are collaborative with a number of Federal agencies. We were not, to my knowledge, involved in the design of Form 8962.

Mr. HICE. Well, sir, you are familiar with the form, though.

Mr. COUNIHAN. Yes, I am.

Mr. HICE. The premium tax credit form.

Mr. COUNIHAN. Yes, I am.

Mr. HICE. Do you have a copy of it there?

Mr. COUNIHAN. Yes, I do.

Mr. HICE. OK. Just a simple observation of this thing. This is two pages, over 90 questions just on one page alone, looking at this, sir. Let me ask you. Just looking at that form, is this something that you believe, as a CEO here, that you could fill out yourself, without some assistance?

Mr. COUNIHAN. This form, Congressman, is not a form that my office created; it is an IRS form. I know that there are directions for the form. We provide tools on Healthcare.gov to also assist in the completion and the use of the benchmark plan information that is used to complete that form. The 1095-A form provides the information needed to complete that.

Mr. HICE. So you are saying you have nothing to do with this form. It certainly is not a simple form for an American to fill out, but it is necessary if they had any break during the year.

Mr. COUNIHAN. As I said, Congressman, not involved in creating IRS or Treasury forms.

Mr. HICE. OK. The Associated Press said that consumer information has been shared with other companies; the people put in information with Healthcare.gov, that information has been shared with other companies. Are you aware of that information being shared?

Mr. COUNIHAN. We have shared no names, addresses, Social Security numbers, any personal information with any third parties.

Mr. HICE. You have not.

Mr. COUNIHAN. We have not.

Mr. HICE. OK. Well, the report is otherwise. Is it appropriate for information to be shared?

Mr. COUNIHAN. I will confirm. We have not shared any names, addresses, Social Security numbers, or any personal information. We will not do so, we have not done so, and we will not do so.

Mr. HICE. I yield. Thank you.

Mr. MULVANEY. The gentleman s time has expired.

We now recognize the gentlewoman from New Mexico, Ms. Lujan Grisham, for 5 minutes.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

In New Mexico, where we have some of the most challenging uninsured and access issues in the Country, the number of individuals uninsured has dropped by about 25 percent, and it is one of the largest drops of any State in the Country, and it is making a powerful difference in making sure that the health status of a poorer State is on its way to improving, and we want to continue to build on that progress.

Notwithstanding, it concerns me greatly, and I know that you are hearing that from all of my colleagues today, that CMS sent approximately 800,000 inaccurate tax forms to individuals who signed up for coverage. I also understand that this is a very large, complicated program, and I understand also, and you have re-Stated it today, that the majority of the tax forms that were sent out inaccurate. But we want to make sure that we are also highlighting that tons of information has also gotten out that has been incredibly accurate and has provided the right avenue for folks to sign up for coverage and get the subsidies and related issues that caused them to not only be covered, but stay covered.

We have had several hearings, and I am going to kind of segue now into the focus of my question, on HHS's efforts and CMSs efforts to make sure that we are addressing the security of this information and the processes are sound, and that we have done a million—I hope that that is not an exaggeration, probably is—but that we are really sufficiently addressing the cybersecurity issues significantly.

So it is clear to me that that is happening. What is not clear to me, given this mistake, is CMS using, specifically, the same continuous monitoring that HHS is using to test the Website, and do you feel that CMS has those tests and those data points to detect your vulnerabilities?

Mr. COUNIHAN. Congresswoman, please, just to make sure that I understand, this is an issue related to security and perhaps cybersecurity risks?

Ms. LUJAN GRISHAM. Be broad. I use that as an example. Including the cybersecurity, including privacy, including protection, and making sure that it is fully integrated, and making sure that States integrate one-stop shopping and make sure that their data points are all integrated.

We know that HHS has done incredible testing. Is CMS using those same mechanisms to test the accuracy of your data on your Websites?

Mr. COUNIHAN. I can speak to the Website. I can speak to the area that I oversee. What I would tell you is the following. One is that the security of our Website is among our absolute highest priorities. No. 2 is that we use the same type of tools and protections used in the most secure industries in the private sector. No. 3 is that we conduct continuous monitoring using multi-layer professional security team to mitigate any potential types of risks. And we are fully committed to maintaining the security.

Ms. LUJAN GRISHAM. Given this mistake, can you point to specifically the safeguards in place, notwithstanding the mistake, that should have caught this mistake? Because my next question, as you answer, maybe you can dp both at the same time, is what are you doing right now to correct this problem so that we don't have future mistakes of this nature in this regard or any other regard? And I recognize that no system is full-proof, but what I do expect is that there is this continuous monitoring, you identify the problem, and that you can assure this committee that it is addressed.

Mr. COUNIHAN. Yes. I appreciate the question. No. 1 is I think I outlined the issue with respect to the interaction between these two pieces of software code. We are still digging deeper to understand the root cause, but we believe we have a fairly good sense of how it is going.

I think what is critical, to your point, Congresswoman, is that we have a structure and a process in place that once an issue is identified, that we can understand it, remediate it, fix it, develop a customer support focus to aid customers, and then have a broad outreach program to show customers how to react.

Ms. LUJAN GRISHAM. And I appreciate your answer very much, and I realize that I am interrupting you. I only have 20 seconds left. I am going to ask that you be much more specific, and I am going to ask that you do that in writing and provide those specifics that you have been asked by my colleagues to get data back to this committee so it is clear to us what that means in very concrete, substantive context so that we can support you to assure that you have the tools and resources to prevent these mistakes and to mitigate.

With that, Mr. Chairman, I yield back my time.

Mr. MULVANEY. I thank the gentlelady and I will now recognize the gentleman from North Carolina, Mr. Walker, for his 5 minutes.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. Counihan, thank you for coming out today. This hearing is morphing into more or less about enrollment numbers than it is about transparency. You talked about the pre-September, maybe not responsible for all the things that happened there, so let's talk about post-September, if we could, for just a few minutes.

In fact, this week, H&R Block announced that 52 percent who enrolled in insurance via the State or the Federal Marketplaces are paying back a portion of their advanced premium tax credit. We have the world's largest tax preparer that for more than half of the enrollees, ObamaCare is costing more than they were told at first.

My question is how do you account for this mishap?

Mr. COUNIHAN. Congressman, our enrollment process relies on eligibility and income information provided by an applicant. That eligibility information and income information is then validated with the appropriate sources to make sure that it is true. As we all know, income can sometimes fluctuate.

Mr. WALKER. So this was the enrollee's fault; had nothing to do with your department?

Mr. COUNIHAN. I am saying that income can fluctuate. If the enrollment information and eligibility information is not updated, sometimes an individual may be getting more tax credits or less tax credits than they would warrant.

Mr. WALKER. Do you know what the average tax credit is, return?

Mr. COUNIHAN. It is $268 a month.

Mr. WALKER. And H&R Block reported the average payback is $530. Would you say that is significant?

Mr. COUNIHAN. Again, sir, I think that having to pay back anything is significant. The $268 translates to roughly $3200 a year. Again, I think that with 87 percent of our enrollment receiving tax credits, it has made a profound difference in providing and accessing affordable care.

Mr. WALKER. Thank you. We have hit already eight to ten different specific areas. Let me talk about a number that you might be able to provide. On a scale of one to ten, how would you rate the department's handling of these issues that we are talking about today?

Mr. COUNIHAN. I feel extremely proud and comfortable representing the way that we have handled our issues.

Mr. WALKER. Eight? Nine?

Mr. COUNIHAN. And the reason why is because we have created a process that identifies a problem, looks at root cause, fixes, provides customer support and outreach. And I say that because it is a repeatable process and it is the appropriate way to respond.

Mr. WALKER. Sure. You spoke earlier about you are unable to give numbers out until they are fully vetted. I believe you used the word verifying.

Mr. COUNIHAN. Yes.

Mr. WALKER. Can you speak for a few seconds what is your vetting and verifying process?

Mr. COUNIHAN. So we have a data analytics team that is dedicated to reviewing our data. They are in charge and accountable for ensuring that it is right, that it is tested, that it is appropriately validated and vetted, and they are accountable for that.

Mr. WALKER. Once it is vetted, do they give those numbers to you, Mr. Counihan?

Mr. COUNIHAN. When the numbers are appropriately tested, verified, and validated, yes.

Mr. WALKER. Who provides those numbers to you?

Mr. COUNIHAN. The data analytics department.

Mr. WALKER. And those numbers, since September, have you given those out to more than five or less than five?

Mr. COUNIHAN. I am sorry, when you say five?

Mr. WALKER. As far as the numbers, as far as these numbers that have been released, people that you have shared these num-

bers with even though they are not complete, is it more than five groups, agencies, individuals, or less than five?

Mr. COUNIHAN. Well, as I said, it is critical for us that we don't share any numbers that haven't gone through this process. And what I have tried to communicate this morning is the urgency and the priority we place on making sure that the numbers that we give are accurate.

Mr. WALKER. So up until today there have been no numbers shared pre-vetting or post-vetting until now.

Mr. COUNIHAN. The example that I would use, Congressman, is the weekly snapshots that we provide that are an update of our open enrollment progress is a good example of how that information gets verified and validated before it is released.

Mr. WALKER. Thank you, Mr. Chairman. I yield back.

Mr. MULVANEY. Thank the gentleman.

Now recognize the gentleman from California, Mr. DeSaulnier, for 5 minutes.

Mr. DESAULNIER. Thank you, Mr. Chairman. Great job on the pronunciation.

Mr. MULVANEY. Did I get that right?

Mr. DESAULNIER. Yes.

Well, thank you for being here today.

And I must admit, Mr. Chairman, as a freshman from California, it is taking some use to assimilating some of the comments from other parts of the Country. While we have had challenges in California, generally, it has been positive. In my previous life, I chaired the budget subcommittee for Health and Human Services and worked closely with members of our exchange, both Republicans and Democrats.

So, having said that, as a supporter of the ACA and believing that we have to recognize the size of the challenge that you are trying to implement, but also being consistent with all concerns by members on both sides, as a supporter, I want as few criticisms as possible within the range of this is huge domestic policy that is very complicated.

So sort of to the last comments, within that context, without quantifying it, and in the spirit of I would really like to not see these kinds of things happen, and not have to defend them because I don't think they are acceptable, where do you feel as if you have done enough corrective actions on the macro level so that we don't see these kinds of things in the media and give the critics the opportunity to take on the whole program altogether?

Mr. COUNIHAN. The process of implementing the law requires significant amount of testing, and an example of that type of testing, whether it is stress testing, load testing, performance testing and such, was the relaunching of our Website this year.

I think that it is probably well known that we had a few bumps or glitches in the first year of its rollout. In its second year we went out of our way to be very conscious about improving the customer experience. We have reduced the number of enrollment screens from 76 down to 16. We put new decision support tools in place that allowed people to select plan either by issuer, by deductible, by even being conscious of a healthcare condition, by premium.

We have a whole section, the learning section of our Website, that provides additional decision support tools to help people pick a plan. We offer 25 percent more issuers than we did the year before, which is providing more competition. We believe in the Marketplace; we believe in competition. We have seen, in fact, that it has driven the adding of more value to consumers that came back and shopped and compare.

So all of which you have described is required as part of a testing process. Is testing always perfect? No. Can there be these instances which occurred here, where you have these two pieces of code that interact unfavorably? Yes. I think the point from our perspective is what do you do about it. And, from our perspective, we have put in a repeatable process of identification, remediation, tools, and communication.

Mr. DESAULNIER. I believe in cost-benefits when they are done right, so you have the cost-benefit sort on the political side and the fiduciary side. We have talked a lot about the costs in this context. The benefits I want to talk about for a minute.

So, according to the CBO, the ACA reduced the number of uninsured Americans by 12 million in 2014 and would bring down the uninsured rate by 19 million in 2015. CBO has also found that between 2016 and 2025 the ACA would reduce the number of uninsured by between 24 to 27 million Americans. Can you explain the impact reductions the uninsured rate have on uncompensated care costs and the price of premiums?

Mr. COUNIHAN. To the States that I have worked in in particular, it has had significant results in impacting and lowering those costs.

Mr. DESAULNIER. Thanks. If you could give me, if you have any for the future, both on the testing and more specific, I know it is on a broad range of numbers that you could give me after the hearing at some point, that would be helpful.

Since the ACA open enrollment started in 2013, an additional 10.1 million Americans have been newly enrolled in Medicaid and the Children's Health Insurance Program, CHIP. To date, 22 States have decided not to expand Medicaid to their residents. The question is if all 50 States expanded Medicaid, do you have an estimate of approximately how many more low-income Americans would gain access to affordable healthcare?

Mr. COUNIHAN. Congressman, I don't have a significant estimate that I would be confident enough sharing. I do know that, again, based on my experience, it would have a dramatic impact.

Mr. DESAULNIER. Appreciate it.

I yield back the remainder of my time, Mr. Chairman.

Mr. MULVANEY. Thank the gentleman.

Now recognize the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. Counihan, thank you for being here. You testified earlier that you came here voluntarily. How long have you known that you were going to be coming here?

Mr. COUNIHAN. I think a couple of weeks, but I am not exactly sure.

Mr. CARTER. Couple of weeks? Well, for someone who knew for a couple weeks they were going to be coming here, I hear a lot of

answers of I don't know, I will have to get back to you. So I am not sure about the preparation for it, but I do appreciate you being here.

I want to ask you, 800,000, 800,000 incorrect forms. Is that acceptable?

Mr. COUNIHAN. Congressman, having one incorrect form is not acceptable.

Mr. CARTER. Well, there is a big difference between having one and having over 800,000.

Mr. COUNIHAN. I understand that. But I think the point is what do you do about it. And what I tried to communicate is the process put in place to identify, remediate, communicate, and move on.

Mr. CARTER. OK. Well, what have you done? First of all, let's back up. What happened? What was the typical error?

Mr. COUNIHAN. As I mentioned earlier, the best of our understanding right now is there were two pieces of software code that interacted in what is called unfavorably, so it ended up replacing the 2014 benchmark price and putting in the 2015 benchmark price on those forms for the 820,000. It didn't happen, obviously, for all of them, and it was a minority of the forms, but that is our best understanding.

Mr. CARTER. OK. And when are you going to get it corrected? My daddy used to tell me, he used to say, son, that is why they put erasers on pencils. Well, you know, I hope you all have invested in an eraser factory because you are going to need a bunch, a whole bunch. When are you going to get them corrected? I don't know about you, but April 15th I get knots in my stomach. Man, I am trying to get all this stuff together for the taxes and my wife, and it is not a good time.

Mr. COUNIHAN. Sir, I can relate to that; I have the same issue with my wife. The forms will be going out next week.

Mr. CARTER. So you have it corrected?

Mr. COUNIHAN. The corrected forms are going out beginning next week.

Mr. CARTER. Well, thank you.

I want to shift gears real quick. King vs. Burwell. You are aware of that.

Mr. COUNIHAN. I am.

Mr. CARTER. You know that that is coming up, and I think we all have our own opinions on what the Supreme Court will rule. I know I think it is pretty clear what they should rule. I think it is pretty obvious that those subsidies were intended for State-run exchanges and not for federally run exchanges; and it is important in my State, in the State of Georgia, because we have a federally run exchange. If those subsidies go away, what is your plan? Have you got a backup plan?

Mr. COUNIHAN. Secretary Burwell has spoken to this issue consistently. I don't have anything more to say. The secretary has spoken for us.

Mr. CARTER. So you haven t had any input into what you might be able to offer as a backup plan?

Mr. COUNIHAN. As I said, the secretary has been very clear about our position on this issue and that is perfectly fine with me. I don't have anything more to add to what the secretary said.

Mr. CARTER. Do you mind repeating to me what the secretary has said?

Mr. COUNIHAN. She believes that we are on the right side of the issue and that we will prevail.

Mr. CARTER. OK, so we take the attitude that we are going to win, so we don't need a backup plan.

Mr. COUNIHAN. As I said, the secretary has been very specific on it and I don't have anything more that I could contribute to her.

Mr. CARTER. Have you spoken to the White House about it at all?

Mr. COUNIHAN. I have not spoken to the White House, but the Secretary has spoken on the issue and I don't have any more to add.

Mr. CARTER. Goodness, gracious. I know that gives the American people a lot of relief to know that. You know, we all have backup plans. Nevertheless, if that is the case, I certainly understand.

I want to get back to a question that was asked earlier about the sharing of information. Now, it has been reported, between reported by a very reputable source, the Associated Press, that information from Healthcare.gov has been shared, shared to private companies. You are telling me that is not true?

Mr. COUNIHAN. I am telling you definitively, sir, that that is not true. We have not shared any personal information. We have not shared anything that includes names, addresses, Social Security numbers, any personal information.

Mr. CARTER. OK, you haven t shared it, but do you know if any has been obtained? Do you know if any has been leaked?

Mr. COUNIHAN. We have not shared any information, sir, any personal information.

Mr. CARTER. OK. Mr. Counihan, again, I thank you for being here. I wish you had been better prepared, but it is what it is. Thank you.

Thank you, Mr. Chairman. I yield back my time.

Mr. MULVANEY. I thank the gentleman and I think I am up, so I will recognize myself for 5 minutes.

Mr. Counihan, it is nice to meet you. I am a new member of the committee, so I haven t had a chance to talk with you before.

Mr. COUNIHAN. Nice to meet you.

Mr. MULVANEY. Mick Mulvaney from South Carolina. And what I want to spend most of my time on is just following up on some of the things you have said to some of my colleagues on both sides, starting with Mr. Meadows from North Carolina. He asked you why you had not been able to provide the breakout data that he had sought on the enrollment numbers, and your answer was that you wanted to make sure the numbers were vetted and verified. I think Mr. Cummings actually asked you similar questions; you said you wanted to make sure the numbers were checked and double-checked and triple-checked. So let me ask you a couple questions about that.

Is that the same standard that you use, sir, before you release information to the public?

Mr. COUNIHAN. Yes.

Mr. MULVANEY. Is it the same standard that you use before you release information to the media?

Mr. COUNIHAN. Yes.

Mr. MULVANEY. All right. So the information that came out a couple weeks ago that said that somebody had miscounted folks who had enrolled in dental coverage, did that come out of your office?

Mr. COUNIHAN. As I recall that issue, that was an issue related to enrollment of last year where stand-alone dental membership was included with healthcare.

Mr. MULVANEY. Correct. And did that data come from your office?

Mr. COUNIHAN. Yes, it did.

Mr. MULVANEY. Had that been vetted, verified, checked, double-checked, and triple-checked before it was released to the press?

Mr. COUNIHAN. Our commitment in communicating data——

Mr. MULVANEY. Hasn't changed. OK, I got you.

Mr. COUNIHAN [continuing]. Is to make sure that it is verified.

Mr. MULVANEY. Fair enough. And it wasn't in that particular circumstance, was it? It was wrong.

Mr. COUNIHAN. Mr. Chairman——

Mr. MULVANEY. There is no shame in admitting you were wrong, Mr. Counihan. I have been wrong. I mean, it is only 11 and I have been wrong three or four times today. The data that came out on the enrollment data was wrong, wasn t it?

Mr. COUNIHAN. Sir, what I would like to communicate to you and to the committee is not only our commitment to verification of——

Mr. MULVANEY. I get it. That is fine. I promise not to beat up on you if you promise not to filibuster the time.

Mr. COUNIHAN. But we have put in new safeguards to avoid that type of problem.

Mr. MULVANEY. I know a lot of people who would—listen, I work with politicians. I have a lot of people who admit they are wrong sometimes. Don't worry about it.

Let me do ask you this. The process. How long does it take to answer Mr. Meadows question?

Mr. COUNIHAN. Well, Mr. Meadows had several questions.

Mr. MULVANEY. OK, let me do it this way. If I ask you a question, listen, Mr. Counihan, can you tell me how many people were auto-enrolled in a different program last year, how long should it take you to answer that question?

Mr. COUNIHAN. It is a seemingly simple question; it is a very complex question.

Mr. MULVANEY. Again, I recognize and I simply ask you how long should it take you to be able to get—if the White House called you and asked you for that, how long would it take you to get that number to them on a vetted, verified, checked, triple-checked basis?

Mr. COUNIHAN. I am unsure.

Mr. MULVANEY. OK. Let's go a different way at this. How many people were unenrolled or uncovered by health insurance before the Affordable Care Act came under law?

Mr. COUNIHAN. That is one of the issues one of your colleagues asked that I need to followup on.

Mr. MULVANEY. Yes. The President said it was roughly 30 million people. Was he roughly correct? He said that, I think, in 2009, in a joint session of Congress.

Mr. COUNIHAN. I suspect he is.

Mr. MULVANEY. OK, so roughly 30 million people were uinsured at the outset of the Affordable Care Act, before the Affordable Care Act became law. Fair enough.

How many people in the Country are uninsured today?

Mr. COUNIHAN. Sir, that also came up from one of your colleagues. It is a good question that I am coming back to you with an answer.

Mr. MULVANEY. OK. Can you give me an educated estimate within, say, a million people?

Mr. COUNIHAN. Sir, I need to get back to you with a more precise response.

Mr. MULVANEY. Can you give me an estimate within 5 million people?

Mr. COUNIHAN. I want to get back to you with a precise response.

Mr. MULVANEY. How about 10?

Mr. COUNIHAN. I want to get back to you with a precise response.

Mr. MULVANEY. You don't have any idea how many people are uninsured in this Nation?

Mr. COUNIHAN. Sir, I have learned, with information, it is important to be precise.

Mr. MULVANEY. I get you. Let me ask this. You had a question earlier from, I believe, Mr. Hice, regarding supplemental funds that were available to your organization.

Mr. COUNIHAN. Right.

Mr. MULVANEY. Who knows whether or not that is a true Statement, whether or not you received supplemental funds? You said you don't. You said you weren't familiar with it, is that correct?

Mr. COUNIHAN. That is correct.

Mr. MULVANEY. So who in your office would know that answer?

Mr. COUNIHAN. I need to explore that.

Mr. MULVANEY. Are you aware, Mr. Counihan, that if you were the CEO of a publicly traded corporation that was subject to the Sarbanes-Oxley requirements that many of the answers that you are giving today could get you throw in jail?

Mr. COUNIHAN. Sir, I am unfamiliar with the Sarbanes-Oxley.

Mr. MULVANEY. Have you told anybody in your office not to provide you with information?

Mr. COUNIHAN. I have not.

Mr. MULVANEY. OK. Has anybody in the White House told you not to seek information regarding any of the information this committee has sought?

Mr. COUNIHAN. No.

Mr. MULVANEY. OK. Do you feel like you have faithfully undertaken to collect the information this committee is seeking from you?

Mr. COUNIHAN. I believe I have a commitment and it is my responsibility to provide that information. I also believe——

Mr. MULVANEY. Actually, that may be the most stunning answer you have given, Mr. Counihan, because that was an easy yes. I asked you if you thought you had faithfully undertaken to give us the information, and you should have said yes, and you didn't.

My time, however, has expired, so I am going to recognize now the chairman of the committee for 5 minutes, Mr. Jordan.

Mr. JORDAN. I thank the gentleman.

Mr. Counihan, we are having a little debate here in Congress this week over what I believe is an unconstitutional action the President took last November with 5 million folks who are in the Country illegally. Will any of the individuals affected by the President's executive action, which I think was unconstitutional—and you don't have to take my word for it, lots of legal scholars on both sides of the aisle think was unconstitutional, and a Federal judge ruled just last week that it was unlawful—will any of those individuals affected by the President's order on immigration be eligible for advanced premium tax credits or subsidies to purchase health insurance?

Mr. COUNIHAN. What I know, Mr. Chairman, is that in order to be eligible, one has to be either a citizen of the United States or lawfully present.

Mr. JORDAN. So——

Mr. COUNIHAN. As a result, sir, the answer to your question is no.

Mr. JORDAN. Can you guarantee that the folks who have enrolled through the Marketplace, can you guarantee none of them are illegal aliens, people impacted by the President's executive action?

Mr. COUNIHAN. As I mentioned before, we have a specific process for verifying any self attestations for enrollment. If someone says that they have a certain type of eligibility information, that gets validated against data sources to see if it is true, and if they can't provide that, we require that they provide specific documentation to prove their eligibility. And that is binary; they either can or they can't.

Mr. JORDAN. To date, do you know if any non-citizens have actually enrolled through Healthcare.gov and are receiving benefits under the Affordable Care Act?

Mr. COUNIHAN. We have had enrollees that have been unable to provide the documentation necessary to prove their eligibility, and they have been terminated.

Mr. JORDAN. OK. Two weeks ago, in this committee room, a colleague of ours, Mr. Mulvaney, in fact, the gentleman chairing the committee, asked the head of the IRS if illegal non-citizens could in fact go back and receive tax benefits through the Earned Income Tax Credit, and the answer was, yes, that can happen. We also asked Mr. Koskinen, the head of the IRS, if in fact he had been consulted by the White House before the President took his unconstitutional executive actions last November. He indicated that the White House did not talk to them.

Has the White House talked to you, the CEO of the Marketplace for Healthcare.gov and for the Affordable Care Act? Did the White House consult you before making their decision last November?

Mr. COUNIHAN. No.

Mr. JORDAN. Not at all?

Mr. COUNIHAN. No.

Mr. JORDAN. Have you been in consultation with them since the decision has taken place to understand it better, or any type of consultation since the decision was made?

Mr. COUNIHAN. No.

Mr. JORDAN. OK.

With that, Mr. Chairman, I would like to yield the remainder of my time to the gentleman from North Carolina.

Mr. MEADOWS. I thank the gentleman from Ohio.

I want to followup on Mr. Mulvaney's question, because you say that you vet all the numbers that you give out. So when you put out a press release that said 800,000 people had gotten the wrong information——

Mr. COUNIHAN. Eight hundred twenty.

Mr. MEADOWS. Well, you put out 800. But when you said that it was 800,000 and that 50,000 of those had already filed, how did you know that?

Mr. COUNIHAN. Congressman, I am not sure of the——

Mr. MEADOWS. You didn't know that.

Mr. COUNIHAN. I am not sure of the details of how we——

Mr. MEADOWS. Well, let me tell you how you didn't know that. Because you are not with the IRS. So how was that vetted? I mean, you just told Mr. Mulvaney you vet every number that goes out, you only put it out, and yet you couldn't have vetted that number because you didn't have access to the IRS information, do you?

Mr. COUNIHAN. What I meant to say, Congressman, is that we have a data analytics department in my operation, our operation, that is responsible for exactly vetting data that comes out of our office.

Mr. MEADOWS. So did that information come out of your office? It was your press release.

Mr. COUNIHAN. I——

Mr. MEADOWS. So you only vet the information that you don't want to give to Congress, is that correct?

Mr. COUNIHAN. No, that is not correct.

Mr. MEADOWS. So you vet all information——

Mr. COUNIHAN. We vet——

Mr. MEADOWS [continuing]. Except when it is a press release that may look negative toward you. Because you didn't vet that information. Let me tell you how you got that 50,000. It was a guess based on percentages of people that may or may not file returns; and yet you put it out as the fact.

Mr. COUNIHAN. Sir, what I can respond to and what I can——

Mr. MEADOWS. Was it not a guess?

Mr. COUNIHAN. What I can speak to you factually is the protections we put in place to ensure that the data that we give you, that I gave to you yesterday over the phone, for example, is accurate.

Mr. MEADOWS. I yield back.

Mr. MULVANEY. The time belongs to the gentleman from Ohio, and his time has expired.

We are going to now recognize for a brief second round of questions, the ranking member, the gentleman from Pennsylvania, Mr. Cartwright, for an additional 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

Mr. Counihan, you are appearing before the Oversight and Government Reform Committee Subcommittee on Healthcare, and we are a collection of Members of Congress. Some of us voted for the ACA; some of us voted against it; some of us were not here when it came up to be voted on. My own view is that the ACA is the law and we need to try to smooth out the rough parts on it and make

it work for Americans, and to amend it where it needs to be amended and make it better.

But as much as we disagree about these things, I and the people across the aisle from me, we do not disagree about the function of this committee and of the Government employees who come before it. We demand Government transparency here in the OGR Committee. We demand accurate answers and timely answers. And I want you to commit to followup with Mr. Meadows and anyone on this committee in an accurate and timely fashion.

I understand. It was brought up before. There was the question of including dental coverage in the numbers of people enrolled, and I think it was something like 400,000 people that got dental insurance were included in the overall numbers. But the bottom line was it was an honest mistake, but it inflated the numbers, so it looked like somebody was trying to paint a rosier picture than actually existed. And it came out of your office.

It was wrong; it was pilloried here on this committee as being wrong, and in the national press; and I must say, I have to say it has to be fair to say that you emerged from that experience much chastened about bandying about numbers that later turned out to be wrong.

So I encourage you, Mr. Counihan, be really careful because, as we continue to debate the merits of the ACA, as we continue to decide what needs to be changed about it going forward into the future, the more you make mistakes about numbers, inaccurate numbers, the more you make mistakes about tax forms, or whoever made that mistake, whether it was a software error or a human error, the more you damage the debate about the merits of the ACA. I appreciate your reticence about giving inaccurate numbers today, but I do encourage you to hurry up, get the accurate numbers, and get them to this committee.

Do you undertake to do that, Mr. Counihan?

Mr. COUNIHAN. Yes.

Mr. CARTWRIGHT. Well, I thank you, sir, and I yield back my time.

Mr. MULVANEY. Thank the gentleman from Maryland.

I am going to recognize myself an additional 5 minutes.

Mr. Counihan, I am going to take a different line of questioning now. I am just going to ask you about some data, whether you do or do not track this kind of data; and I am going to use myself as an example.

I am enrolled in the ObamaCare exchanges, as are many Members of Congress and many of our staff. I had coverage through my employment, as most folks do—most folks who have coverage get it through their work—prior to enrolling in the ObamaCare exchanges. So my question to you, sir, is am I counted in the roughly 10 or 11 million people who have enrolled?

Mr. COUNIHAN. You are enrolled through the Washington, DC. link exchange?

Mr. MULVANEY. Correct. Yes, sir, the D.C. shop, I think.

Mr. COUNIHAN. You would be not part of the Federal exchange Marketplace numbers; you would be included as part of the State-based Marketplace numbers.

Mr. MULVANEY. But when you say that 11 million people signed up for ObamaCare, me and my family, we are five of those 11 million people?

Mr. COUNIHAN. Yes. As I understand it, you and your family are enrolled through D.C. Link?

Mr. MULVANEY. Yes, sir.

Mr. COUNIHAN. Which is a State-based exchange.

Mr. MULVANEY. But my kids are enrolled through South Carolina. My wife and I enrolled separately because they live back home.

Mr. COUNIHAN. OK.

Mr. MULVANEY. But, generally speaking, we signed up through the exchanges.

Mr. COUNIHAN. OK. Well, I don't know if it is just you that is in D.C. Link or the family, but——

Mr. MULVANEY. But we are all counted in the 10 to 11 million people who have signed up for ObamaCare.

Mr. COUNIHAN. If you and your family are in D.C. Link, you would be counted.

Mr. MULVANEY. And in South Carolina the folks are counted as well, aren't they?

Mr. COUNIHAN. In South Carolina, people that participate in the Federal Marketplace, yes.

Mr. MULVANEY. Yes. OK, that is fine. And that is what we are. So here is my question to you: When you tell Congress, when you tell the public, when you tell the media that between 10 and 11 million people have signed up for ObamaCare, do you track differently people who had insurance before and are now on the exchange?

Mr. COUNIHAN. When you say track, could you define that, please?

Mr. MULVANEY. Do you know how many of the—let's use the number 11 million people. I will give you the benefit of the doubt here. let's say 11 million people have signed up for ObamaCare. Do you know how many of those folks were insured separately before they signed up for ObamaCare?

Mr. COUNIHAN. Not consistently.

Mr. MULVANEY. So you don't know how many of those 11 million people are newly covered.

Mr. COUNIHAN. Well, there are studies that are done by many organizations that track——

Mr. MULVANEY. I am not asking about studies by outside organizations. I am asking about you folks. Do you track that number?

Mr. COUNIHAN. But the numbers that you are referring to is a combination of two sources; it is a combination of the Federal Marketplace and it is a combination of State Marketplaces.

Mr. MULVANEY. Correct.

Mr. COUNIHAN. Some States track that information; some States do not.

Mr. MULVANEY. Does the Federal exchange?

Mr. COUNIHAN. D.C. Link, as a matter of fact, does track that.

Mr. MULVANEY. So you know how many people within the Federal exchanges have——

Mr. COUNIHAN. I said D.C. Link, which is the Washington, DC. State-based exchange.

Mr. MULVANEY. OK. Well, good. We will look forward to getting that data, then.

All right, with that, I have two and a half minutes left. I am going to yield the balance of my time, then, to the gentleman from North Carolina, Mr. Meadows.

Mr. MEADOWS. So let's go back to the definition of fraud, would you agree, is knowing that you are doing something that is incorrect and not telling anybody? Would you agree with that? Is that fraud? Is that fraudulent?

Mr. COUNIHAN. Sir, I am not a lawyer.

Mr. MEADOWS. OK. I am not a lawyer either. How would you define fraud? OK, maybe that is too hard of a question. So let me get to an easier question.

Mr. COUNIHAN. OK.

Mr. MEADOWS. Are there people in the Affordable Care Act, through no fault of their own, not misrepresenting their income, that are getting the wrong subsidy?

Mr. COUNIHAN. The subsidies are very dependent on information provided by the——

Mr. MEADOWS. That is not my question. My question is without their income, assuming everything they told you is 100 percent accurate——

Mr. COUNIHAN. Right.

Mr. MEADOWS [continuing]. Are there people in the Affordable Care Act that have done everything right that are getting the wrong subsidy?

Mr. COUNIHAN. If there are people that provided all the correct information, that updated their eligibility in a timely way——

Mr. MEADOWS. That is not what I asked.

Mr. COUNIHAN. Well, I am trying——

Mr. MEADOWS. I asked a very specific question. They did everything right. You auto re-enrolled them.

Mr. COUNIHAN. Yes.

Mr. MEADOWS. Are they getting the wrong subsidy?

Mr. COUNIHAN. OK, I didn't——

Mr. MEADOWS. You know where I am going with this.

Mr. COUNIHAN. I understand it clear now. You are talking about the enrollment for 2015 and the——

Mr. MEADOWS. The auto re-enrolled people, are they getting the wrong subsidy?

Mr. COUNIHAN. If they did not come back into the marketplace and update their income and eligibility like we have strongly encouraged throughout the summer and throughout the fall, it is possible that they are getting an incorrect subsidy.

Mr. MEADOWS. Yes or no, are they getting—you know the answer.

Mr. COUNIHAN. Congressman, with——

Mr. MEADOWS. There are almost 2 million people, according to the numbers you gave me yesterday, that were auto re-enrolled.

Mr. COUNIHAN. Correct.

Mr. MEADOWS. Are the vast majority of those getting the wrong subsidy?

Mr. COUNIHAN. I don't know the answer to that.

Mr. MEADOWS. OK. Well, let me answer it for you.

Mr. COUNIHAN. OK.

Mr. MEADOWS. Because I have had to go do all the work, and I can tell you the answer to that is yes; and you know it is yes, and you are perpetrating a fraud on the American people. Do you not know that they are getting the wrong subsidy?

Mr. COUNIHAN. Sir, with all due respect, I am not sure that you can say that they are getting the wrong subsidy.

Mr. MEADOWS. OK, I know that over 9,000 people in my district that were auto re-enrolled are getting the wrong subsidy because you used the subsidy from last year, and the Silver benchmark plan that they were on last year changed. So would you agree that 9,000 people in my district are getting the wrong subsidy?

Mr. COUNIHAN. I would not necessarily agree with that because unless you have different information, Congressman, and you very well might, but some of those 9,000 people could well have come back to Healthcare.gov, updated their income and eligibility, and be getting the 2015——

Mr. MEADOWS. I am talking about passive re-enrollment. Listen, you are splitting hairs. I know this almost as well as you do now. The passive re-enrolled people, are they getting the wrong subsidy, yes or no?

Mr. COUNIHAN. If people did not come back to the Marketplace and did not update their eligibility, it is possible that they could be getting the 2014 subsidy, yes.

Mr. MEADOWS. And you know that. So have you notified those people that it is incorrect?

Mr. COUNIHAN. We notified people, as I understand it—this was before my time, but when this decision was made last summer, so this would be the summer of 2014, there was a broad communication campaign to alert people to this decision.

Mr. MEADOWS. In January, of the almost 2 million people, and it was more than that in January, but assuming that there is 2 million people that were auto re-enrolled, you know because 820,000 of them just got the wrong 195-As, you know approximately how many people are getting the wrong subsidy.

Mr. COUNIHAN. But, sir, those are actually independent actions.

Mr. MEADOWS. I understand that.

Mr. WALBERG [presiding]. The gentleman s time from South Carolina has expired. Give another 5 minutes to the gentleman from North Carolina.

Mr. MEADOWS. I thank you.

So let's followup on this questioning. Do you have any estimates on how many people are getting the wrong subsidy today?

Mr. COUNIHAN. Sir, I do not. What I——

Mr. MEADOWS. Have you looked for those?

Mr. COUNIHAN. What I can tell you is the information that I gave you yesterday, for example, showed that 1.96 million people were auto re-enrolled.

Mr. MEADOWS. No, that is not correct.

Mr. COUNIHAN. What do you mean it is not correct?

Mr. MEADOWS. Auto re-enrolled was 2.8 something, and then people came back and actually came back, so then the net number now is that number you just gave me.

Mr. COUNIHAN. That is correct. It was 2.83 as of December 16th, 2014.

Mr. MEADOWS. Well, December 16th is curious because open enrollment didn't stop and automatic re-enrollment didn't stop until December 18th. So why the 2-day difference?

Mr. COUNIHAN. But that was where we ended auto re-enrollment.

Mr. MEADOWS. So on December 16th that was the accurate number.

Mr. COUNIHAN. That is correct. And as a matter of fact, as you may recall, over the phone, you and I actually walked through——

Mr. MEADOWS. Where the other numbers came from.

Mr. COUNIHAN. That is right.

Mr. MEADOWS. Right.

Mr. COUNIHAN. That is right. And I am sorry, sir, just to insert one other point is that we continue to strongly encourage people to back to Healthcare.gov——

Mr. MEADOWS. I will too because, according to my numbers, there are hundreds of thousands of people getting the wrong subsidy, and you know that that is correct, don't you?

Mr. COUNIHAN. Sir, we are encouraging people to go back to Healthcare.gov, update their eligibility——

Mr. MEADOWS. That is a Statement; that is not an answer to my question. Do you know that hundreds of thousands of people are getting the wrong subsidy.

Mr. COUNIHAN. Sir, as I am telling you, we are encouraging people to get the right subsidy by updating their eligibility.

Mr. MEADOWS. OK. Is it not fraud when you know that you are doing wrong and not informing the very people that you have been charged to support? Is that not fraudulent?

Mr. COUNIHAN. Sir, I don't know the legal definition of fraud, but what I can tell you is——

Mr. MEADOWS. Is it ethical?

Mr. COUNIHAN [continuing]. Is when this decision was made, back last summer, there was broad communication and outreach about the decision. Going into the fall, when I arrived, that has been going on in the same and continues now.

Mr. MEADOWS. So you support that decision. You support the decision to keep the American people in the dark. Most of these are very low-income folks or, at best, moderate income, and what they are going to get is a surprise, and you know they are going to get a surprise a year from now where you have given them the wrong subsidy.

Mr. COUNIHAN. The decision was made in the summer of last year. Since that time——

Mr. MEADOWS. And you support that decision, obviously; you haven t changed it.

Mr. COUNIHAN. Since that decision was made, we continue to try to get people to go back and update their income to make sure exactly what you are saying does not occur.

Mr. MEADOWS. But it is occurring, wouldn't you agree?

Mr. COUNIHAN. I would agree that it may occur.

Mr. MEADOWS. You are an intelligent individual. Is it occurring or not?

Mr. COUNIHAN. When people do not update their eligibility, they are going to be having the 2014 APTC, the Advanced Premium Tax Credit, applied. But as I said, sir——

Mr. MEADOWS. So if that is the case, so let's take your assumption. Out of all the people that auto re-enrolled in North Carolina, if that is the case, over half the counties have a different benchmark plan, so they would be getting a different subsidy, because their carrier is no longer the same carrier.

Mr. COUNIHAN. But, sir, I think you are forgetting one critical component, which is you are assuming that nobody is coming back to update their eligibility or income, and I don't that that is true.

Mr. MEADOWS. No, I am not. I started out with that. These are passive re-enrolled people, which means they never came back.

Mr. COUNIHAN. That is correct, sir. But it is still possible for people to come and update their eligibility.

Mr. MEADOWS. I understand that. So if they didn't come back, they are getting the wrong subsidy.

Mr. COUNIHAN. They would be getting the 2014 subsidy.

Mr. MEADOWS. So is it wrong or right?

Mr. COUNIHAN. It is the 2014 subsidy, it is not the 2015 subsidy.

Mr. MEADOWS. OK. Did the subsidy—and I hate the way you are going through this, making me go through all of this—did the subsidy, in most of the counties in North Carolina and, in fact, across the Country, according to your press release, change because the Silver benchmark plan changed?

Mr. COUNIHAN. You are absolutely right, sir. It depends on the county. It is a county-specific issue. I can t recall, offhand, how many counties throughout the Country where that occurred.

Mr. MEADOWS. Well, according to your press release, over 85 percent of the people could have gotten a lower plan. So is that correct? I am sure you vetted that number.

Mr. COUNIHAN. There are instances where the——

Mr. MEADOWS. Well, I am out of time, so I will yield back.

I thank the patience of the chair.

Mr. WALBERG. Thank you, Mr. Meadows.

The chair recognizes the gentleman from Tennessee.

Mr. DESJARLAIS. Mr. Counihan, what would you say would be the best way to define success of the Affordable Healthcare Act?

Mr. COUNIHAN. That is a very good question. I think it is several things. I think one would be reduction of uninsured——

Mr. DESJARLAIS. OK, well, let's talk about that. I think that s probably how you would define that.

Mr. COUNIHAN. I think it is multi-dimensional.

Mr. DESJARLAIS. OK, but let's start with that because that is an important topic. That is what the President said, we needed this law because there are 30 million uninsured people in this Country, and we need to help those people.

Did you write your opening Statement or did somebody write it for you?

Mr. COUNIHAN. It was written with my input.

Mr. DESJARLAIS. OK. And when you talked about the number of uninsured, you told me it was the lowest in five decades. What was the uninsured rate five decades ago?

Mr. COUNIHAN. I am not sure.

Mr. DESJARLAIS. OK, how do you know that it is the lowest if you don't know what that was, and how can you tell us today, tell this committee that we have the lowest rate of uninsured in five decades? I think Mr. Mulvaney asked if you could tell us within 1 million or even within 5 million, and you didn't give us an answer. Can you give me an answer now?

Mr. COUNIHAN. What I can tell you, and I am happy to provide this as part of my Statement, is that each of the data that has been cited has a reference point to where that came from.

Mr. DESJARLAIS. OK. Well, you are telling us that there are 11.6 million people signed up, so we don't know whether those were previously uninsured or people who just changed insurances.

Mr. COUNIHAN. So that is information that is tracked by some States. There are studies done periodically that do measure the impact on the uninsured both through Medicaid expansion and through the rollout of qualified health plans.

Mr. DESJARLAIS. Do you feel like your opening Statement was accurate and truthful?

Mr. COUNIHAN. Yes.

Mr. DESJARLAIS. OK, so your claim that we have the most uninsured can't be substantiated by you today because you can't give us any numbers. So are you just theorizing that that is the truth or is that the truth?

Mr. COUNIHAN. No. Every piece of information in my testimony, my opening Statement was qualified and cited to a specific data source.

Mr. DESJARLAIS. Well, we worry a little bit about propaganda because this was a really unpopular law when the President tried to pass it; he had to cut all kinds of deals to get the votes to pass it. Then the IRS had to change the rule that the Supreme Court is going to be looking at here in a few weeks, King and Burwell, very important, and we will talk about that for a minute, too. But when you said that you send out weekly data, that is accurate; every week you put that out it is accurate.

Mr. COUNIHAN. Yes.

Mr. DESJARLAIS. But today you can't tell us what is accurate or not.

Mr. COUNIHAN. No, I think I didn't speak properly. What I said was that in my opening Statement, whenever there was a reference to information or to data, that it was cited.

Mr. DESJARLAIS. Well, if you were the President, you would want to make your program look go. So by saying that you have the lowest number of uninsured in five decades, that is obviously an attempt to say, hey, this thing is working. But when we ask you those numbers, you can't give them to us. So is this just propaganda? Is this the President trying to make his law look better than it is?

Mr. COUNIHAN. What I tried to say, and perhaps I didn't say it as clearly as I should, is that any data or information that I share with this committee has to be spot-on.

Mr. DESJARLAIS. OK, are the weekly reports spot-on?

Mr. COUNIHAN. They are.

Mr. DESJARLAIS. OK. Actually, there seems to be a disconnect here because every week you can give spot-on data, but today, in our committee, you can't tell any of us spot-on data.

Mr. COUNIHAN. I think I gave some spot-on data, sir.

Mr. DESJARLAIS. It would be squeezed in between a lot of non-answers.

I asked you earlier how do you get the money back from the illegals who have gotten or the people you can't verify should be getting healthcare, and I don't think you had time to answer. Mr. Jordan brought it up as well. How do we get the money back, subsidies that were given to people illegally?

Mr. COUNIHAN. What I tried to describe, sir, was the process that we use that is very specific to verify people's eligibility.

Mr. DESJARLAIS. How do we get the money back?

Mr. COUNIHAN. Specific to your point about getting money back would relate to how much money has been inappropriately spent, and I don't know the answer to either one of those two. I don't have the facts behind that.

Mr. DESJARLAIS. And you told Mr. Jordan that you didn't talk to anybody about the impact that the President's executive action may have?

Mr. COUNIHAN. Correct.

Mr. DESJARLAIS. OK, it sounds like something we might want to be concerned about because it sounds like we are talking about a lot of money. And you said Secretary Burwell handled the issue of what is going to happen or not in King.

Mr. COUNIHAN. Yes.

Mr. DESJARLAIS. OK, so you don't have an opinion on that? These 11 million people that you are here today saying that this law has been a success because you are helping cover, you don't have an answer for them if the Supreme Court strikes down the subsidies from the employees?

Mr. COUNIHAN. The secretary has spoken for us.

Mr. DESJARLAIS. And what she said is that they don't have a plan, they don't need a plan. Do you all know something we don't know about the Supreme Court decision?

Mr. COUNIHAN. The secretary has spoken for us. I don't have a comment on that issue, sir.

Mr. DESJARLAIS. Are you comfortable with her answer? I mean, you have to be able to think for yourself. Does that make you feel a little bit nervous about what might happen if it is not ruled in your favor?

Mr. COUNIHAN. I am very comfortable with the secretary s answer.

Mr. DESJARLAIS. All right, thank you for your time.

Mr. COUNIHAN. Thank you.

Mr. WALBERG. The gentleman from Ohio is recognized for 1 minute.

Mr. JORDAN. I thank the chairman. Just real quickly, I wanted to followup where the gentleman from Tennessee was.

So you say you have this elaborate fail-safe process that no illegals are going to sign up for the Affordable Care Act; yet, you

have 50,000 folks who have already filed their tax returns with false information that you all gave to them. Can you assure this committee and, more importantly, the American people that no illegals have signed up for ObamaCare and received any kind of subsidy or any kind of benefit?

Mr. COUNIHAN. What I described——

Mr. JORDAN. No, no, that is a real simple question. Can you assure this committee and, more importantly, the American people that no illegals have signed up and received benefits from ObamaCare?

Mr. COUNIHAN. What I have tried to do is to describe the process we do to validate——

Mr. JORDAN. That is not the question. You did that with my line of questioning the last time. I am asking you can you assure us that no one has received benefits who is an illegal?

Mr. COUNIHAN. Sir, we have an elaborate validation process——

Mr. JORDAN. Can you——

Mr. COUNIHAN [continuing]. And I am confident in the process.

Mr. JORDAN. We have been here now an hour and a half, and we would like one time for you to give us just a yes or no when we ask a question. Mr. Meadows tried for 15 minutes to get you to answer a question. We would like you to answer this one question because it is important to the debate that is taking place in Congress this week, important debate that the American people care pretty deeply about. Can you assure this committee and the American people that no one, no illegal has received benefits under the Affordable Care Act?

Mr. COUNIHAN. Sir, I am going to repeat——

Mr. JORDAN. OK, so here is the point, Mr. Counihan.

Mr. COUNIHAN. We have a very——

Mr. JORDAN. If your fail-safe, wonderful approach to make sure this doesn't happen, if it is so good, that would be easy for you to say, yes, I can assure you. But my guess is you won't say yes because obviously your approach on sending out tax information to these folks is not fail-safe. You have 50,000 people already filed, 800,000 people who got false information. So it is a logical question for the American people to ask, now, if that happened, might some illegals be getting benefits under the Affordable Care Act today. And you should be able to assure the American citizens that that is not happening, and you won't do it.

Mr. COUNIHAN. What I can assure the American people is the same assurance I give you and the rest of the committee, which is the discipline of the process for validating eligibility.

Mr. JORDAN. This is amazing, Mr. Chairman. This is amazing.

Mr. WALBERG. Thank you, Mr. Jordan.

The chair recognizes the gentleman from Florida.

Mr. DESANTIS. Good afternoon, sir. The President's program, executive program that is subject of much controversy, where he is going to issue up to 5 million work permits to people who are in the Country illegally, Social Security numbers, when they get those documents, would they then be eligible to have ObamaCare subsidies?

Mr. COUNIHAN. Sir, I need to educate myself better in the details of that.

Mr. DESANTIS. And are you aware if a business, if faced with who otherwise is subject to the ObamaCare system, has a choice to hire either a U.S. citizen or somebody with one of these work permits, isn't it the case that the U.S. citizen would be subject to the employer mandate? In other words, the employer would have to provide the ObamaCare-prescribed insurance, but somebody who is here illegally, the employer would actually not have to provide it; therefore, the person who is here illegally can be hired at a lower price?

Mr. COUNIHAN. Well, sir, and I am not a labor lawyer and I am not an expert in this, but——

Mr. DESANTIS. With the employer mandate, though, if somebody has a work permit and they are not here legally, the employer, it is as if that doesn't apply to them, right?

Mr. COUNIHAN. I think there are some consequences for hiring illegal aliens if I am an employer.

Mr. DESANTIS. Well, the President is issuing work permits. I am saying if he issues the work permits, then that is basically a signal to the employer that you can hire these people. Otherwise, why would you issue the work permits?

Mr. COUNIHAN. You know, sir, with deep respect, this is a Department of Labor issue. This is beyond my bailiwick.

Mr. DESANTIS. It is an ObamaCare issue, because the reason why you would have a hiring incentive, perhaps, is because of the disparate treatment that folks will get the way the law is written. So I just think it is important for the American people to know if these work permits enable people to go and get subsidies, then taxpayers would want to know that. If they are actually exempt from the employer mandate, then that seems to me to provide an incentive for employers to hire folks who have those, who are not legally in the Country but have the work permit. And, yes, they are hiring, but it is an issue that is germane to the patient protection in Affordable Care Act and its requirements.

Mr. COUNIHAN. Sir, I understand the question. It calls for speculation.

Mr. DESANTIS. Why would it call for speculation? The law has been on the books since 2010. wouldn't we know?

Mr. COUNIHAN. My understanding of your question is you are asking me to speculate if there is some type of incentive in place for an employer to hire a certain type of work force. That is my understanding of your question.

Mr. DESANTIS. So you look at the law on the books, you know that these work permits are coming down the pike, so it is a simple question of if somebody is illegally here and they get a work permit, what is the interaction with that and the Affordable Care Act. So it is not a speculation; it is looking at the law on the books and then explaining what the department s position would be.

Mr. COUNIHAN. Sir, I need to think through your question.

Mr. DESANTIS. So can you reply to us in writing and we can lay out the question? Because I just think it is important to know. Some of this stuff, it seems, that has frustrated a lot of the American people is kind of done on the fly and we don't even know the rules. This one we need to know one way or another.

With that, I am going to yield the remainder of my time to my friend from North Carolina, Mr. Meadows.

Mr. WALBERG. The gentleman from North Carolina is recognized.

Mr. MEADOWS. I thank the gentleman from Florida.

So let me ask the last question, since you know we would not have had this hearing if you had just had responded to any of the 23 emails. Do you realize that, that if you just responded to my simple request, that this wouldn't have had to happen? So let me ask this question. How many people were put in a plan other than the exact plan that they had in 2014?

Mr. COUNIHAN. I don't know the answer to that yet. I know that that is a critical question and that is information that we will be getting.

Mr. MEADOWS. So it is your testimony here today that you do not know the number, be careful because you are under oath, you do not know the number of the number of people that were put in a plan other than the one they were in 2014, after 70 days of me asking?

Mr. COUNIHAN. Sir, I do not have a number I would share with you. I don't have a verified number that I am confident to share with you.

Mr. MEADOWS. OK. Well, give me the non-verified; we will put a big qualifier around it. How many?

Mr. COUNIHAN. Sir, with the deepest respect, I am not going to share a number with you that is not verified.

Mr. MEADOWS. So you have done analysis.

Mr. COUNIHAN. We are doing analysis.

Mr. MEADOWS. Would you say there are over 800,000 of them?

Mr. COUNIHAN. I think the number is significantly smaller than that.

Mr. MEADOWS. So you have a ballpark.

Mr. COUNIHAN. I have a ballpark. I am not sharing a ballpark until it is verified, sir.

Mr. MEADOWS. All right, so you put between 500,000 and 800,000 people in a plan other than the one they had had, so they may not have the same doctor.

Mr. COUNIHAN. The issue about provider networks—and you and I have had a discussion about this—is actually independent of that transfer.

Mr. MEADOWS. It is. Yes. So who decides who is in that, you or the insurance companies?

Mr. COUNIHAN. And you and I discussed this as well.

Mr. MEADOWS. And I know the answer. So go ahead and answer it for the American people.

Mr. COUNIHAN. OK, because I come from that world. That is a relationship, a contractual relationship, as you know, that is created between the insurance company and the providers.

Mr. MEADOWS. All right. And that is exactly where I wanted to go. So the insurance company and the patient are the ones that have the contractual obligation.

Mr. COUNIHAN. You mean the insurance company and the provider.

Mr. MEADOWS. And the provider.

Mr. COUNIHAN. Yes.

Mr. MEADOWS. Right. So as we have done that, you have reached in and you have decided for over a half million people what plan they should have. Did you not do that?

Mr. COUNIHAN. Sir, in the first place, that number that you threw out is not a number that I would necessarily support. You said a half million people. That is one.

Mr. MEADOWS. So you say it is less than that.

Mr. COUNIHAN. As I said, I believe it is less than that, but——

Mr. MEADOWS. Well, you have people behind you. If they are not going to help you with it, don't bring them. They know the number. You know the number.

Mr. COUNIHAN. Sir, you and I have discussed this. I am——

Mr. MEADOWS. All right, can we get that answer within the next 7 days?

Mr. COUNIHAN. Sir, I will get that answer to you as quickly as I can.

Mr. MEADOWS. Mr. Chairman, I would yield back, but before yielding back I would suggest the committee strongly look at subpoenaing all the data, all the correspondence, because it is obvious that this gentleman is stonewalling the committee and, more important, it is not the committee, it is the American people, and I take that very seriously. And I thank the patience of the chair.

Mr. WALBERG. Thank you, Mr. Meadows.

I would like to yield myself just a minute or two to finalize a couple questions here, then we will close the hearing for the day.

The Navigators program was funded through Federal grants to outreach groups so that they could enroll individuals in their exchanges. Our review has uncovered that this program, in 2014, had a negligible effect. The question is this: Mr. Counihan, was the Navigators program in operation for this last enrollment period?

Mr. COUNIHAN. Yes.

Mr. WALBERG. How much funding was given to these support groups?

Mr. COUNIHAN. I need to confirm that with you; I am not exactly sure. I have that information, but I can't remember it right offhand.

Mr. WALBERG. Where do you have the information?

Mr. COUNIHAN. In my office.

Mr. WALBERG. In your office. You didn't bring the information with you?

Mr. COUNIHAN. Not for that specific question.

Mr. WALBERG. OK. Did you conduct any analysis on whether the Navigator program was actually improving the quality of applications submitted, that is, they had fewer mistakes?

Mr. COUNIHAN. We have done a lot of analysis about the Navigator and a sister program.

Mr. WALBERG. And why did you feel like you had a need to do that?

Mr. COUNIHAN. I am sorry, why did we feel?

Mr. WALBERG. Yes.

Mr. COUNIHAN. Well, to be quite frank with you, sir, it is because it involves taxpayer money. We want to be appropriate stewards of taxpayer money; it is all of our money and we want to make sure we are getting the proper return.

Mr. WALBERG. You want to be properly stewards of taxpayers money, but 52 percent of them have trouble as far as whether they are paying back $530 I believe was the exact number?

Mr. COUNIHAN. I am unfamiliar with that quote. I know you referred to H&R Block or something like that. I don't know about that.

Mr. WALBERG. I wouldn't think you would.

You know, I will just be frank with you. I am fairly new at the process here, have sat through a few hearings, but I would venture to guess if we were to ask you all these questions or all the answers to all the questions we asked that you did not know, if we were to extend a week to you, is that something that you would be willing to do to bring back the answers to multiple questions that there was basically I can't recall?

Mr. COUNIHAN. Sir, I am responsible for the program. It is my responsibility to be accountable to the department, as well as to you, for information that you need.

Mr. WALBERG. That was my final question, and I still didn't get a yes or no. If you were extended a week, would you be able to come back with most of this information?

Mr. COUNIHAN. Yes.

Mr. WALBERG. Thank you.

Mr. MEADOWS. Would the gentleman yield for one point of clarification?

Mr. WALBERG. The gentleman is recognized from North Carolina.

Mr. MEADOWS. You mentioned that automatic re-enrollment ended on December 16th. That highlighted comes from your Website. And I know that you can't read that from there, but your Website actually says that auto re-enrollment started on December 16th and closed on December 18th. So is——

Mr. COUNIHAN. No.

Mr. MEADOWS. I mean, I just pulled that off, because all I have to go by is what you put on the Web.

Mr. COUNIHAN. I understand.

Mr. MEADOWS. So what you are saying is it is vetted incorrectly on your Website.

Mr. COUNIHAN. No, I am not saying that. What I am saying is I can't see that document, to be frank with you——

Mr. MEADOWS. Well, you can have them pull it up, because it is on Healthcare.gov right now, and it says that auto re-enrollment stopped on December 18th.

Mr. COUNIHAN. That is because of processing time. That is the difference between the actual stop date of the 16th and the processing time to the 18th.

Mr. MEADOWS. All right. Thank you for that clarification.

Mr. WALBERG. Thank you, Mr. Meadows.

My closing remark would be one of the things that I believe that could help what I feel like is a very poor performance is a very prompt response to many of these questions, and I hope that we look forward, we all look forward to some of these vital answers that are important to the American people.

I would like to thank our witness for sitting in that seat for the last hour and 40 minutes and doing your best job to answer, I hope, the many questions.

If there is no further business, without objection, the committee stands adjourned.

[Whereupon, at 11:50 a.m., the subcommittee was adjourned.]

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