FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

July 9, 2013

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is investigating your decision to disregard the requirement under the Patient Protection and Affordable Care Act (PPACA) to verify income and health insurance status of individuals applying for federal subsidies to support enrollment under the law's health insurance exchanges.

On July 5, 2013, the Department of Health and Human Services (HHS) issued a 606-page final rule for the PPACA. Instead of requiring state exchanges to verify an applicant's income, which is used to calculate the amount of subsidy an applicant can receive, the final rule allows state exchanges to accept the applicant's "attestation" of household income. Further, under the final rule, state exchanges may accept an "applicant's attestation regarding enrollment in an eligible employer-sponsored plan . . . without further verification." The *Washington Post* reported that the department's final rule would "significantly scale back the health law's requirements . . . ."

The decision not to verify an exchange applicant's self-reported statements about household income and insurance status is exacerbated by scant oversight of the eligibility determination to ensure that the "attestations" are accurate. The rule indicates that for the federal exchange, and those state exchanges operated by the federal government, HHS intends to conduct a sample of the attestations and check them to determine if they are accurate. Attestations not included in the sample will not be subject to any verification or review. Even this minimal level of oversight is not required of the state-run exchanges. The final rule provides that state-run exchanges may accept the attestation without further verification or even sampling to determine the accuracy of the information provided.

HHS' final rule on verifying eligibility for the exchanges came only days after the Department of the Treasury's (Treasury) announcement that it would delay enforcing the PPACA requirement that employers with more than 50 employees provide a federally defined standard of health care coverage. Both the HHS final rule and the Treasury announcement raise troubling questions about the status of the administration's efforts to implement the PPACA and to what extent the exchanges will be operational by the time enrollment begins on October 1, 2013. The administration has had three years to implement the PPACA, yet in the span of just three days, two agencies have used administrative actions to significantly change fundamental requirements of the law. As we wrote to you in a letter dated July 3, 2013, these announcements are completely at odds with the public statements of administration officials.

In order to understand the status of PPACA implementation, and how eligibility for exchanges will be verified, please provide the following information and documents no later than July 17, 2013:

1. Describe the processes and procedures that will be in place, if any, to review an exchange applicant's attestation about income and whether their employer offers affordable health care coverage.

2. Describe the processes and procedures that will be in place, if any, to review the submissions of exchange applicants to determine if they properly described their income and the availability of affordable employer-provided health care coverage.

3. Describe the processes and procedures that will be in place if a determination is made that an exchange applicant did not properly report their income or did not properly disclose affordable coverage provided by an employer.

4. Identify the date on which you were first made aware of any discussion relating to a delay of any PPACA requirements surrounding the law's mandate that employers with more than 50 employees provide health care coverage meeting certain federal standards. Provide all documents and communications, including e-mail, that were sent or received by you referring or relating to this delay.

5. Identify the date on which you were first made aware of any discussion relating to a delay of the requirement that the insurance marketplaces verify consumers' income and health insurance status. Provide all documents and communications, including e-mail, that were sent or received by you referring or relating to a delay of the requirement that marketplaces verify consumers' income and health insurance status.

6. Identify the date on which Gary Cohen, Director of the Center for Consumer Information and Insurance Oversight, was first made aware of any discussion relating to a delay of any PPACA requirements surrounding the law's mandate that employers with more than 50 employees provide health care coverage

meeting certain federal standards. Provide all documents and communications, including e-mail, that were sent or received by Mr. Cohen referring or relating to this delay.

7. Identify the date on which Gary Cohen was first made aware of any discussion relating to a delay of the requirement that the insurance marketplaces verify consumers' income and health insurance status. Provide all documents and communications, including e-mail, that were sent or received by Mr. Cohen referring or relating to a delay of the requirement that marketplaces verify consumers' income and health insurance status.

8. Provide all documents or communications referring to or discussing any delay of the PPACA's requirements. This would include, but is not limited to, any analysis or documentation on the department or administration's authority to delay any PPACA requirements or take administrative or executive action not to enforce any part of the PPACA.

Instructions for responding to the Committee's document request are included as an attachment to this letter. Thank you for your prompt attention to this matter. If you have questions or wish to discuss your responses or production, please contact Karen Christian or Sean Hayes with Committee Staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

Marsha Blackburn
Vice Chairman

Michael C. Burgess
Vice Chairman
Subcommittee on Oversight and Investigations

Joe Barton
Chairman Emeritus

Joseph R. Pitts
Chairman
Subcommittee on Health

Phil Gingrey
Member

Billy Long
Member

Steve Scalise
Member

Cory Gardner
Member

Bill Johnson
Member

Pete Olson
Member

Gregg Harper
Member

Renee Ellmers
Member

Morgan Griffith
Member

cc: The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Ranking Member
Subcommittee on Health