

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

August 15, 2014

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, M.D. 21244

Dear Administrator Tavenner:

Pursuant to Rules X and XI of the United States House of Representatives, over the course of the last year, the Committee on Energy and Commerce has been reviewing the actions taken by the Centers for Medicare and Medicaid Services (CMS) before and after the launch of HealthCare.gov. As the website has already cost taxpayers nearly one billion dollars and made it nearly impossible for many Americans to enroll in health coverage, this Committee is interested in identifying the processes and procedures that led to the failed site. In the course of our review we have requested documents and communications from CMS to fully understand what went wrong. Ten days after the failed launch of HealthCare.gov, this Committee on October 10, 2013, requested communications related to the problems with the website.¹

Over 10 months after sending this request, last week your staff informed the Committee on Energy and Commerce that copies of your e-mail communications could have been lost. CMS also informed the National Archives and Record Administration that it was possible that some of your email records “may not be available to HHS.”² This unusual development is unfortunately part of a pattern of this administration’s inability to properly preserve records.³ In the letter to the National Archives, CMS represents the potential loss of your emails as the result of the “extremely high volume of emails” that are received daily.

¹ Letter to Kathleen Sebelius, Secretary of the Department of Health and Human Services, from Fred Upton, Chairman, H. Comm. On Energy & Commerce (Oct. 10, 2013).

² Letter to the National Archives and Records Administration, from Kathleen Cantwell, Director, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services (Aug. 6, 2014).

³ Associated Press, *IRS Destruction of Lois Lerner’s Hard Drive Confirmed in Court Filings*, THE WASHINGTON TIMES, July 18, 2014; Erica Martinson, *EPA Joins IRS Lost Emails Club*, POLITICO, June 25, 2014.

The day after a CMS official informed the Committee about the potential loss of your emails, HHS provided the Committee with additional documents related to our review of HealthCare.gov. One of the e-mails in this production shows that you directed a subordinate to delete an email communication featuring a number of White House representatives. This e-mail is an October 5, 2013, communication in which you forwarded a discussion with White House representatives to the Director of Communications for CMS with the message: "Please delete this email-but please see if we can work on call script." This contradicts the letter sent to the National Archives, which explained that your practice was to instruct subordinates to retain copies of e-mails. A copy of this e-mail is attached.

We are writing you today to ask that you make yourself available as soon as possible to discuss the following questions:

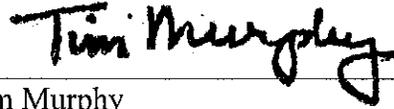
1. Why did you ask Julie Bataille, the Director of Communications for CMS, to delete the conversation featuring White House representatives you had sent to her?
2. Did you direct HHS or CMS staff to delete or otherwise destroy e-mails, communications, or any other documents relating to HealthCare.gov? Please identify and produce these documents to the Committee.
3. How will you or CMS determine whether other e-mails, communications, or any other documents are permanently lost?
4. What is the basis for the redactions contained in the October 5, 2013, e-mail to your subordinate? The HHS cover letter to the Committee which accompanied this e-mail indicates that some redactions have been done to address "longstanding Executive Branch institutional interests." What are the Executive Branch interest(s) that are being redacted in an e-mail that you are asking to be deleted?
5. What documents has HHS collected relating to HealthCare.gov but not produced to this Committee? As mentioned in this letter, our requests for information related to HealthCare.gov was sent on October 10, 2013. Yet only last week did you provide documents, including the October 5, 2013, e-mail in which you instruct your subordinate to delete that forwarded email exchange with the White House. We ask that you provide the Committee with a complete accounting of your document production to date including, but not limited to, the custodians identified, the number of documents identified, the number of documents that have been produced, and the number of documents you have submitted for White House review.

Please contact Committee Staff so that we schedule a time to discuss this as soon as possible. If you have questions please contact Karen Christian, Sean Hayes, or Emily Newman with Committee Staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Henry Waxman, Ranking Member

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