



March 21, 2014

Congressional Requesters

**Department of Health and Human Services: Solicitations of Support for Enroll America**

The Patient Protection and Affordable Care Act (PPACA) includes provisions intended to increase the number of Americans who have health care coverage,<sup>1</sup> including requiring the establishment of health insurance exchanges—also known as marketplaces—in all states.<sup>2</sup> The Department of Health and Human Services (HHS) plays a key role in implementing PPACA.<sup>3</sup> Many nongovernmental entities (hereafter referred to as outside entities) are also involved in activities related to PPACA, including educating consumers about the health coverage options newly available under PPACA and assisting with enrollment. In June 2013, the Secretary of HHS (hereafter referred to as the Secretary) testified that she solicited support on behalf of Enroll America, a nonprofit organization whose mission is to maximize the number of uninsured Americans who enroll in health coverage made available by PPACA.<sup>4</sup> However, certain facts surrounding HHS’s activities to solicit support for outside entities engaged in PPACA-related activities were unclear.

You asked that we develop information on HHS’s activities to solicit support on behalf of outside entities engaged in activities related to the implementation of PPACA. We are providing information on the facts surrounding solicitations of support made by HHS officials for outside entities engaged in activities related to PPACA and the actions taken by HHS officials to inform their decisions to make such solicitations.

To obtain the information we present here, we reviewed written responses from HHS to questions we asked about its solicitations of support since the enactment of PPACA in March 2010 and documentation related to those activities, including e-mail correspondence and internal memoranda. We also reviewed HHS’s written responses to questions on the actions taken to inform their decisions to make solicitations and related documentation, including written guidance provided by HHS’s Office of General Counsel (OGC). To supplement these reviews,

<sup>1</sup>Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010 (HCERA), Pub. L. No. 111-152, 124 Stat. 1029 (2010). For purposes of this report, references to PPACA include the amendments made by HCERA.

<sup>2</sup>Health insurance exchanges are marketplaces where eligible individuals can compare and select among plans offered by participating private issuers of health coverage.

<sup>3</sup>For example, PPACA requires HHS to approve the establishment of health insurance exchanges in each state and, in states not establishing an exchange, to establish and operate exchanges in these states. In 2014, HHS’s Center for Medicare & Medicaid Services (CMS) is operating federally facilitated exchanges in 34 states. CMS conditionally approved proposals from the remaining 17 states (including the District of Columbia) to operate state-based exchanges in 2014.

<sup>4</sup>U.S. Congress, *Reviewing the President’s Fiscal Year 2014 Budget Proposal for the U.S. Department of Health and Human Services, Before the House Education and the Workforce Committee*, transcript (Washington, DC: Federal News Service, Inc., June 4, 2013), accessed through LexisNexis Congressional January 16, 2014. 113th Cong. (2013) (statement of Health and Human Services Secretary Kathleen Sebelius).

we interviewed HHS officials and reviewed congressional testimony by the Secretary and HHS correspondence with members of Congress. We also interviewed representatives from Enroll America. In addition, we interviewed representatives or reviewed written responses to questions from five organizations from which HHS reported soliciting support for Enroll America. We also contacted the White House to verify information provided by the one organization that mentioned a contact with the White House on this issue.

We conducted this performance audit from August 2013 to March 2014 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **Results in Brief**

Our review of HHS's written responses and documentation found that, since the enactment of PPACA, the Secretary of HHS contacted the Chief Executive Officers (CEOs) of five organizations to solicit support for one outside entity, Enroll America, involved in activities related to PPACA. Specifically, the Secretary requested financial support for Enroll America from the Robert Wood Johnson Foundation (RWJF) and H&R Block; and nonfinancial support, such as technical assistance, from Ascension Health, Johnson & Johnson, and Kaiser (which consists of the Kaiser Foundation Health Plans and Kaiser Foundation Hospitals).<sup>5</sup> Our review of the documentation also found that the Secretary asked for guidance on soliciting support for outside entities prior to making these five contacts and obtained specific written guidance from HHS's OGC prior to making four of them. Among other things, this guidance stated that HHS officials may encourage members of the public to support certain organizations assisting Americans to enroll in coverage under PPACA, pursuant to authority provided under sections 1703 and 1704 of the Public Health Service Act.<sup>6</sup>

### **HHS's Activities to Solicit Support and to Inform Decisions to Solicit Support for an Outside Entity**

In developing information on HHS's activities to solicit support for outside entities involved in activities related to PPACA and the actions taken by HHS officials to inform their decisions, we addressed the following.

1. *Identify any outside entities engaged in activities related to PPACA on behalf of which HHS solicited funds.*

HHS reported that since PPACA was enacted in 2010, the Secretary solicited financial support on behalf of one outside organization involved in activities related to PPACA, namely, Enroll America. According to HHS officials, neither the Secretary nor any member of her staff requested financial support on behalf of any other outside

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<sup>5</sup>RWJF is a private philanthropic organization focusing on health and health care issues. H&R Block is a for-profit consumer tax services provider. Ascension Health is a nonprofit faith-based healthcare system. Johnson & Johnson is a for-profit family of companies engaged in the manufacture and sale of products related to health and well-being. The Kaiser Foundation Health Plans are nonprofit regional health plans that contract with individuals and groups for comprehensive health care services and Kaiser Foundation Hospitals is a nonprofit corporation that owns and operates, or contracts for, hospital facilities and services.

<sup>6</sup>An independent analysis of these and other potentially applicable provisions of law and regulation was outside the scope of our work.

organization involved in PPACA-related activities. The department reported that the Secretary solicited financial support for Enroll America at that organization's request and that no other entity has asked the Secretary to solicit funds on its behalf.

2. *Describe how HHS and outside entities for which it solicited funds coordinated efforts related to PPACA, including any written or oral agreements between them.*

HHS reported that HHS staff and Enroll America staff have had many discussions about their respective enrollment activities and work collaboratively on shared goals, but HHS and Enroll America do not have any oral or written agreements to coordinate efforts. HHS provided examples of their coordination with Enroll America, reporting that HHS and Enroll America staff had frequent meetings together and the Secretary spoke to Enroll America volunteers on the third anniversary of the enactment of PPACA. Enroll America representatives told us that the organization has worked extensively with HHS. They said that Enroll America provided public comments on nearly all HHS regulations related to enrollment in coverage made available under PPACA. They invited HHS regional staff to meetings of Enroll America teams working on enrollment in states with large numbers of uninsured people. Enroll America also hosted conferences and meetings with hospitals, constituency groups, and others, and Enroll America representatives said that HHS officials participated in some of those forums.

3. *Identify any HHS or other federal government personnel and their positions who were involved with soliciting support on behalf of outside entities engaged in activities related to PPACA.*

HHS reported that the Secretary was the only HHS official who solicited financial support for Enroll America. HHS also reported that neither the Secretary nor any other HHS official solicited financial support for any other outside entity engaged in PPACA-related activities. According to HHS, the Director of Intergovernmental and External Affairs was present for one of the two calls the Secretary made to solicit financial support for Enroll America and for three calls during which the Secretary sought nonfinancial support for Enroll America. HHS reported, and documentation confirmed, that a number of other HHS staff were involved to some extent in preparing for the five calls, including, for example, staff from the Office of the Secretary and the HHS Office of General Counsel.

HHS officials reported that they were not aware of any federal government personnel outside of HHS who solicited funds on behalf of Enroll America. Similarly, representatives from Enroll America told us that they were not aware of any other federal personnel who solicited funds on its behalf. The representative of RWJF, one of the two organizations that HHS contacted to solicit funds on behalf of Enroll America, told us about a discussion that occurred in 2012 between an RWJF staff member and the Deputy Assistant to the President for Health Policy. According to RWJF, this official estimated that Enroll America or other similar national enrollment organizations would likely need about \$30 million to finance a national outreach effort. RWJF told us that the official also indicated a hope that RWJF would provide a significant financial contribution to support such efforts, but did not make a specific funding request on behalf of Enroll America or any other outside entity. While White House officials agreed that the Deputy Assistant to the President for Health Policy did not make a specific funding request on behalf of Enroll America or any other outside entity, they stated that this official did not offer RWJF a specific estimate of the level of financial support needed for national outreach efforts. They further stated that a reference to financial support like that

suggested by RWJF was possible, but in connection with broad strategic discussions related to national outreach efforts that included discussions of both financial and nonfinancial support for such efforts. The RWJF representative also told us that the foundation's CEO asked White House officials whether it would be appropriate to describe a \$10 million dollar grant the foundation had awarded to Enroll America in a May 2013 meeting of philanthropic foundation executives sponsored by and held at the White House.<sup>7</sup> The RWJF representative further told us that the White House did not object and that RWJF described the grant at the meeting.

4. *Describe the HHS resources used for soliciting support on behalf of outside entities and the cost incurred in doing so.*

HHS reported that its activities to solicit support for Enroll America included the relatively nominal costs of telephone calls and e-mail correspondence and the staff time used to prepare for the calls.<sup>8</sup> HHS did not provide an estimate of the amount of staff time used because, according to HHS officials, the department does not track staff time in a way that would allow them to do so.

5. *Identify any individuals and their affiliations that the Secretary or her subordinates contacted or addressed in order to solicit financial or nonfinancial support for outside entities.*

HHS reported that, since PPACA was enacted, the Secretary made phone calls to the CEOs of two outside organizations—RWJF and H&R Block—to solicit funds for Enroll America.<sup>9</sup>

- **Call to RWJF.** On January 29, 2013, the Secretary called the CEO of RWJF,<sup>10</sup> and during this call, according to HHS, the Secretary encouraged RWJF to continue providing financial support to Enroll America. During the call, according to the RWJF representative, the Secretary encouraged RWJF to continue its commitment to enrollment in health care coverage. However, RWJF did not recall the Secretary specifically mentioning Enroll America or making a direct request for financial support. The RWJF representative told us that the foundation made two grants to Enroll America in 2013 that were dated after the call with the Secretary: a \$3 million grant in April 2013 for operational support and a \$10 million challenge grant in May 2013 through which RWJF agreed to match donations that other sources made to Enroll America through September 1, 2013. The RWJF representative told us that the decisions to make these two grants were not made in response to the Secretary's call. The RWJF representative also said that the foundation had provided two grants to Families USA, a nonprofit consumer advocacy group, to help establish Enroll America, one in 2010 and one in 2011. RWJF also made a \$150,000 grant to Enroll America that started on January 1, 2013, to support strategic planning.

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<sup>7</sup>Under this grant, RWJF agreed to match donations that other sources made to Enroll America through September 1, 2013, with total RWJF funds not to exceed \$10 million. The RWJF funds were contingent on those donations.

<sup>8</sup>HHS told us that HHS pays \$146.64 per month per user for e-mail; that this charge covers connectivity, storage, and other e-mail services; and that this charge is independent of the number of e-mails that are sent or received. HHS also told us that the Office of the Secretary pays \$10.44 per month per telephone line, that this charge covers all features associated with the lines and the phones, and that this charge is independent of the number of phone calls made per month. Each phone call, whether local or long distance, is charged at a unit cost of \$0.014 per minute.

<sup>9</sup>HHS reported that the department does not regulate RWJF or H&R Block.

<sup>10</sup>The CEO also served as President of the foundation at that time.

- **Call to H&R Block.** The Secretary made the second call in which she solicited a financial contribution for Enroll America on April 29, 2013, to the CEO of H&R Block. According to representatives of H&R Block, the Secretary and CEO had a general discussion of the potential effect of PPACA on H&R Block's business before the Secretary discussed Enroll America's activities and suggested that H&R Block consider making a financial contribution to the organization. Representatives said that prior to the Secretary's call, H&R Block was considering making a donation to Enroll America, but ultimately did not make a contribution.

In addition to the two calls soliciting financial support, HHS reported that the Secretary made phone calls to the CEOs of three organizations—Kaiser, Ascension Health, and Johnson & Johnson—during which she did not solicit financial support, but did solicit nonfinancial support such as technical assistance.<sup>11</sup>

- **Call to Kaiser.** On March 22, 2013, the Secretary called the then-CEO of Kaiser.<sup>12</sup> Representatives from Kaiser confirmed that the Secretary did not request financial support for Enroll America. They also said that Kaiser provided funding to Enroll America after the Secretary's call, although they said that their organization, as a founding member of Enroll America's board, had expected before the call to make donations. They told us that Kaiser also had made financial donations to the organization prior to the Secretary's call.
- **Call to Ascension Health.** On March 28, 2013, the Secretary called the CEO of Ascension Health. Representatives from Ascension Health reported that the purpose of the call was to ask the CEO to continue his leadership role in the effort to educate people about their new coverage options under PPACA and how to enroll in them in advance of the open enrollment period. Further, during the call, the Secretary and the CEO discussed the importance of Enroll America in that effort and their mutual support for Enroll America's mission and work. Ascension Health representatives also reported that Ascension Health pledged \$1 million in funding to Enroll America subsequent to the Secretary's call. They told us that Ascension Health became a founding member of Enroll America in September 2011 and had provided financial support to the organization prior to 2013.<sup>13</sup>
- **Call with Johnson & Johnson.** On April 11, 2013, the Secretary spoke by phone with the CEO of Johnson & Johnson. Representatives from Johnson & Johnson reported that during this call the Secretary solicited nonfinancial support to address the enrollment challenge to implementing PPACA. The representatives confirmed that the Secretary did not request financial support. Further, the representatives told us that the CEO did not recall the Secretary mentioning Enroll America.

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<sup>11</sup>According to HHS, these three organizations are regulated by the department. HHS officials told us that although the Secretary received guidance from the HHS Office of General Counsel that it was within her authority to solicit financial support from regulated entities, she chose not to do so.

<sup>12</sup>The CEO was also at the time the Chairman of Kaiser.

<sup>13</sup>Ascension Health also reported providing technical assistance; for example, representatives reported that Ascension Health worked with Enroll America staff to set up advocacy webinars and briefings for staff in Ascension's affiliated hospitals.

HHS also reported that the Secretary interacts regularly with a broad range of stakeholders on PPACA-related issues and occasionally mentions the work of Enroll America. HHS documentation from April 2013 indicated that the Secretary's standard talking points for meetings with stakeholders (e.g., hospitals, insurers, and drug companies) included discussing Enroll America's efforts and noting that HHS was working closely with Enroll America. However, HHS officials told us that those talking points were not regularly included in briefing materials or used by the Secretary after April 2013. Officials said that the Secretary continued to discuss Enroll America with other stakeholders, but it became less necessary for the Secretary to explain Enroll America's work because Enroll America was getting more publicity and HHS's support of Enroll America's work was clear.

6. *Describe the specific request(s) made to any individuals or entities that the Secretary or her subordinates contacted.*

HHS officials told us that the Secretary discussed specific levels or ranges of financial support in her calls with the CEOs of RWJF and H&R Block. For example, HHS officials told us that in the call with H&R Block, the CEO discussed the amount that the organization was considering contributing. HHS officials told us that the Secretary validated the work of Enroll America and suggested an amount higher than what H&R Block had said it was considering. Enroll America representatives told us that Enroll America asked the Secretary to request financial support from the other three organizations as well and, in at least one case, Enroll America asked HHS to solicit specific levels of financial support. However, HHS reported that the Secretary did not request financial support for Enroll America in these calls, instead asking Ascension Health, Kaiser, and Johnson & Johnson to support Enroll America through their own public show of support and by providing technical support and advice. Representatives from the five organizations told us that HHS did not request a specific amount of financial or nonfinancial support.

7. *Describe any commitments or offers made by HHS to any individuals or entities that were contacted.*

HHS reported that no commitments or offers were made to the five organizations that the Secretary contacted to solicit financial or nonfinancial support for Enroll America. Representatives from the five organizations also stated that no commitments or offers were made by HHS.

8. *Determine whether the Secretary or other HHS personnel were aware of the results of their solicitations of funds and whether the outside entities reported to HHS about their financial activities, donors or amounts donated, and if so what those reports showed and how HHS used that information/those reports.*

HHS reported that the department does not track donations to private entities, but that HHS personnel had heard that RWJF awarded a grant to Enroll America. HHS reported that they were unaware of any donation by H&R Block. Enroll America representatives told us that they had an ongoing relationship with HHS and likely discussed which organizations had decided to contribute. HHS documentation indicated that Enroll America staff and HHS staff discussed Ascension Health's pledge of \$1 million. Ascension Health's CEO also notified the Secretary of its plan to contribute to Enroll America.

9. *Describe any clearance or guidance related to soliciting support from outside entities that the Secretary and her subordinates received from the designated agency ethics official, the Office of Government Ethics, the General Counsel of HHS, the Department of Justice, and/or the White House.*

HHS's documentation indicated that the Secretary asked for guidance on requesting support for outside entities engaged in activities related to enrollment under PPACA in January 2013 prior to her call with RWJF, the first of the five calls to solicit support for Enroll America. She received oral guidance from HHS OGC, which is responsible for advising all HHS employees on government ethics statutes and regulations, in early February and written guidance later in the month, after the call with RWJF but prior to the four remaining calls. Among other things, this document noted that HHS officials may, pursuant to authority under sections 1703 and 1704 of the Public Health Service Act (PHSA), encourage members of the public to support certain organizations assisting Americans to enroll in coverage made available under PPACA and provided guidelines for doing so.<sup>14</sup> In June 2013, the HHS OGC expanded upon its February guidance; for example, the June guidance provided examples of how to apply the February guidance and included a more detailed discussion of sections 1703 and 1704 of the PHSA.<sup>15</sup> According to HHS officials, OGC added to the guidance to provide more detail so that it could be applied more easily. Officials told us that there was not a specific event that triggered the more detailed guidance. HHS reported that the Secretary did not seek any clearance or ethical guidance about these activities from sources outside of HHS.

### **Agency Comments**

We provided a draft of this report to HHS and the White House for their review. HHS provided technical comments, which we incorporated as appropriate. The White House informed us it had no comments on the draft report.

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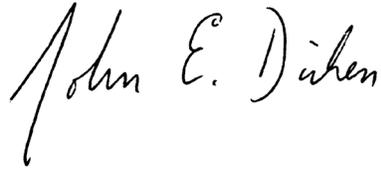
As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretary of Health and Human Services, appropriate congressional committees, and other interested parties. The correspondence is also available at no charge on the GAO website at <http://www.gao.gov>.

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<sup>14</sup>Section 1703 of the Public Health Service Act (PHSA) authorizes the Secretary "to conduct and support by grant or contract (and encourage others to support) new and innovative programs in health information and health promotion, preventive health services, and education in the appropriate use of health care . . . ." 42 U.S.C. § 300u-2. Section 1704 of the PHSA authorizes the Secretary "to conduct and support by grant or contract (and encourage others to support) such activities as may be required to make information respecting health information and health promotion, preventive health services, and education in the appropriate use of health care available to the consumers of medical care . . . ." 42 U.S.C. § 300u-3.

<sup>15</sup>Among other things, the June guidance included language from section 1703(c) of the PHSA, which provides, "The Secretary is authorized to support by grant or contract (and to encourage others to support) private nonprofit entities working in health information and health promotion, preventive health services, and education in the appropriate use of health care." 42 U.S.C. § 300u-2(c).

If you or your staff members have any questions about this report, please contact me at (202) 512-7114 or [dickenj@gao.gov](mailto:dickenj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this correspondence. Other key contributors to this correspondence included Susan Barnidge, Assistant Director; Kristi Peterson, Assistant Director; Kristen Joan Anderson; Christine Davis; Sandra George; and Laurie Pachter.

A handwritten signature in black ink that reads "John E. Dicken". The signature is written in a cursive style with a large, prominent initial "J".

John E. Dicken  
Director, Health Care

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The Honorable Orrin Hatch  
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Committee on Finance  
United States Senate

The Honorable Lamar Alexander  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
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The Honorable Jack Kingston  
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