

EXAMINING THE CONCERNS ABOUT OBAMACARE OUTREACH CAMPAIGN

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY POLICY,
HEALTH CARE AND ENTITLEMENTS

AND THE

SUBCOMMITTEE ON ECONOMIC GROWTH,
JOB CREATION AND REGULATORY AFFAIRS

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EXAMINING THE CONCERNS ABOUT OBAMACARE OUTREACH CAMPAIGN

Tuesday, May 21, 2013,

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE &
ENTITLEMENTS, JOINT WITH THE SUBCOMMITTEE ON
ECONOMIC GROWTH, JOB CREATION AND REGULATORY
AFFAIRS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 10:09 a.m., in Room 2154, Rayburn House Office Building, Hon. Jim Jordan [chairman of the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs] presiding.

Present from Subcommittee on Energy Policy, Health Care & Entitlements: Representatives Lankford, Gosar, McHenry, Jordan, Walberg, DesJarlais, Woodall, Speier, Norton, Cartwright, Duckworth, Cardenas, Lujan Grisham, and Horsford.

Present from Subcommittee on Economic Growth, Job Creation and Regulatory Affairs: Representatives Jordan, DeSantis, Duncan, McHenry, Gosar, DesJarlais, Collins, Meadows, Bentivolio, Cartwright, Duckworth, Connolly, Pocan, Kelly, and Horsford.

Also Present: Representative Cummings.

Staff Present: Ali Ahmad, Majority Communications Advisor; Alexia Ardolina, Majority Assistant Clerk; Brian Blase, Majority Senior Professional Staff Member; Molly Boyd, Majority Parliamentarian; Caitlin Carroll, Majority Deputy Press Secretary; Katelyn E. Christ, Majority Professional Staff Member; Drew Colliatie, Majority Professional Staff Member; Gwen D'Luzansky, Majority Professional Staff Member; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Meinan Goto, Majority Professional Staff Member; Tyler Grimm, Majority Professional Staff Member; Mark D. Marin, Majority Director of Oversight; Emily Martin, Majority Professional Staff Member; Tegan Millspaw, Majority Professional Staff Member; Scott Schmidt, Majority Deputy Director of Digital Strategy; Sharon Meredith Utz, Majority Professional Staff Member; Jaron Bourke, Minority Director of Administration; Yvette Cravens, Minority Counsel; Devon Hill, Minority Research Assistant; Jennifer Hoffman, Minority Press Secretary; Nicholas Kamau, Minority Counsel; Una Lee, Minority Counsel; Jason Powell, Minority Senior Counsel; Brian Quinn, Minority Counsel; and Rory Sheehan, Minority New Media Press Secretary.

Mr. JORDAN. The committee will come to order. We want to welcome folks today.

Mr. Cohen, we will get to you in just a second, but you know how it works: you have to listen to us first, then we get to you. So we will do our opening statements.

And Mr. Lankford is on his way and Mr. Cartwright is on his way, but, in the interest of time, we will get started.

There is a lot we don't know about Obamacare, but the more we learn, the worse the law seems. We know that Obamacare remains unpopular. We know that it has sparked considerable confusion and certainly uncertainty. Frankly, I spoke to business people yesterday in our district and this was one of the main topics we talked about. We know that many businesses are refusing to hire and expand because of the law.

Now the Administration wants to spend billions of dollars promoting the law, money that would be much better spent on patient care or something else. If it is so good, why does the Administration have to spend so much money in advertising? Because of Obamacare's complicated mix of regulation, taxes, subsidies, and mandates, premiums for relatively young and healthy people are projected to spike next year. For millions of these individuals, premiums will increase by 50 percent or more, and, of course, lots of these young people are currently paying lower rates, the very groups of individuals that the Administration, through navigators and assisters, most wants to enroll in the exchanges.

The increased premiums will make millions of Americans worse off. Other individuals will only be applying for insurance and exchanges because of Obamacare's expensive subsidies, which will greatly exacerbate Federal deficits beginning next year.

CBO estimates that the law will cost \$1.8 trillion over the next 10 years, a price tag that seems to rise each year.

We know that there is a major problem in California. The California State legislature decided to conceal spending on all of its exchange contracts, including funding for the State's Assisters Program. This means Federal taxpayers won't have knowledge of how California is spending hundreds of millions of their dollars.

In addition to all the funding, training, and oversight concerns about navigators and assisters, the overreach of the Administration in its overall implementation efforts is also stunning. For example, Congress has denied Health and Human Services Secretary Kathleen Sebelius several additional requests for pouring more taxpayer money into the law, so the Secretary has taken money, in many cases, without clear legal authority from different sources to fund Obamacare.

HHS officials admitted to this committee that the Secretary lacks legal authority for this Assisters Program, a program created solely to get around Obamacare's explicit prohibition on using State-established grants to fund navigators in exchanges established by those States.

The Secretary has failed to respond to an April 19th, 2013, letter from the committee relating to the Secretary's transferring of funds for Obamacare implementation. More recently, however, is the Secretary's brazen fundraising push, despite Federal ethics regulations

forbidding any department official from fundraising in a professional capacity.

Recent reports indicate that the Secretary has placed multiple phone calls to help insurance, pharmaceutical, and hospital executives over the past three months, asking them to contribute money to nonprofits leading Obamacare outreach efforts. One such organization, Enroll America, a spinoff of Families USA, which lobbied strongly for the passage of the law, HHS actions to elicit donations on behalf of organizations connected to the Administration are even more troubling.

Finally, in light of the revelation of IRS's targeting of conservative groups applying for tax-exempt status, it is crucial for the American people to understand that Obamacare tasks the IRS with enforcing nearly 20 new tax laws. It is amazing to me. The very organization who is charged with enforcing Obamacare was systematically targeting conservative groups who came into existence because they opposed Obamacare, and it was targeting them for over a two year time period.

It is also important to remember that the IRS is building the largest personal information data hub the Federal Government has ever attempted. The IRS has a central role in Obamacare's very complicated subsidy scheme. According to Treasury's own analysts, many taxpayers who do everything right will still face significant harm from the scheme. According to the Taxpayer Advocate, taxpayers who did not update their household information during the year, such as income, marital status, change in family size, or receipt of employer-sponsored insurance, may find that they owe a significant amount of money at the end of the year, money they likely do not have.

In fact, the IRS's role in enforcing Obamacare is tied with the Navigator and Assister Program. If navigators and assisters incorrectly fill out people's health insurance applications and individuals receive subsidies to which they were not entitled, then the IRS will go after the individuals for the overpayment. The insurance companies who receive the overpayment and the navigators or assisters who provided the bad advice won't face any harm.

With less than four months to go before the launch of the health care insurance exchanges, we must focus on what can be done to save our health care system from the huge train wreck that Obamacare implementation has become.

I hope, Mr. Cohen, that you can tell us that the Health and Human Services has given much greater thought to the navigator and assister rule, and will issue a final rule that is consistent with statutory authority which protects consumers and which increases standards for navigators.

With that, I would yield to the gentlelady from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you very much, Mr. Chairman. I must take exception to your attempt to link the Affordable Health Care Act with the present investigation of IRS. To say that is a stretch is to give you too much credit.

I thank the members and our witnesses, Mr. Cohen, who is before us now.

Until recently, I had thought that one of the major differences between the Banana Republics and other pseudo-democracies was that in this Country, once a law was passed or once the Supreme Court has spoken, the law was the law and the law was carried out. This has been always, until now, a Country where respect for law and the rule of law was unquestioned, even when our side lost a particular bout or a particular round and a law came forward with which we disagreed. The nature of democracy is you implement the law that has been passed by the majority.

Now, last summer, the Supreme Court ruled, and on this question the Supreme Court is the law of the land, and they ruled that the Affordable Health Care Act was constitutional, and there was no question that this was the law of the land. Of course, that is very good news for millions of Americans who don't have health insurance and every day are getting access to health insurance.

But the Republican majority is still fighting the Affordable Health Care Act as if it were not the law of the land and if they had not taken an oath to uphold the law of the land, whatever that law was. Just last week, I am not sure whether it is because they have no agenda whatsoever for the 113th Congress and they needed something to fill the time, but they passed, once again, the 37th repeal of the Affordable Health Care Act, to giggles and scorns throughout the United States.

You keep that up, and more and more no one takes you seriously as a legislature.

Like that vote, today's hearing is merely an attempt to obstruct the law and the rights of American citizens to health insurance. It is time to assure that the law of the land is carried out effectively and efficiently, instead of trying to undermine the law of the land as if this were not a democracy.

Congress intended that consumers receive assistance and information in the process of enrolling in the new health care options. After all, this is a new law, an unprecedented law. Accordingly, the Navigator Program was created by Congress to serve as a tool to help educate and enroll citizens. The reason for the Navigator Program is simple: reducing health care costs, which I had assumed everyone wanted to do, requires that everyone be covered; that everyone be in the insurance pool. Navigators are helping people to get health care coverage, some for the first time in their lives, and in the process lower health care costs for everyone in the Nation. The more people in the pool, the less health care costs everybody in the United States.

Furthermore, the model for the enrollment efforts of the Affordable Care Act is very well established. Much the same model was used more than two decades ago to implement the State Children's Health Insurance Program. In some States an enrollment assister, as she is called, helped consumers enroll, just like Congress intended for the health exchanges created through the Affordable Health Care Act.

As of today, not a single grant application for the Navigator Program has been reviewed and no grants have been awarded as of yet. It is, therefore, premature to say much of anything about what the program is doing. I hope that we can avoid speculating about the worst case scenarios that haven't happened and will sincerely

work toward the efficient and effective implementation of health care that lowers health care costs for us all.

That is within our reach if we will fulfill what Congress intended in passing the Affordable Health Care Act and, I might add, what the law now demands for everyone who took the oath to uphold the law as a member of the United States Congress, and I yield back.

Mr. JORDAN. I thank the gentlelady.

We now turn to the chairman of the committee, and let me just say I am sure, on behalf of the whole committee, we are certainly thinking about the folks in Oklahoma, in your district and surrounding areas, and praying for all that they have to deal with and what you are dealing with as a member.

So we now recognize the chairman, Mr. Lankford.

Mr. LANKFORD. Thanks, Jim.

And thank you, so many people that have prayed for us for what is going on in Oklahoma right now. These are incredibly difficult days for a lot of families there.

Last month, my subcommittee held a hearing on key problems in America's health care system. We heard testimony about the lack of transparency in competition in health care markets, about widespread medical errors, and about rising health care costs. Four years ago, Congress created the Affordable Care Act to attempt to resolve these issues. I strongly believe that the Affordable Care Act actually creates more problems than it solves, and I want to do everything that I can to protect the people in my district from the harmful effects of this law.

But it is the law of the land and the implementation is beginning. Congress has an important oversight role to ensure the Administration follows the law during its implementation efforts and that implementation harms as few people as possible.

Obamacare requires that exchanges make grants to at least two organizations in each State with a Federal exchange to serve as a so-called navigator, an entity responsible for finding people without insurance and encouraging them to sign up. However, Obamacare explicitly prohibited State-based exchanges from using Federal grants for navigators.

Now we understand that a twin program, called In-Person Assistants, has been created by HHS funded with Federal grants. In fact, during a briefing last month, HHS officials confessed to Republican and Democratic staff that there is no statutory authority for the Assistants Program.

On April 19th and May the 6th, Chairman Issa, Chairman Jordan, and myself sent letters to Secretary Sebelius outlining many of our significant concerns with the agency's plans for these outreach programs. We still have many unanswered questions. Our letter still has not been responded to.

Has HHS mandated a criteria for individuals who can be navigators or assistants? For instance, could felons, individuals convicted of identity theft, high school dropouts be navigators and handle sensitive and personal information?

Is there an expectation that a navigator or an assistant applicant will have any prior knowledge about the functioning of health insurance markets? Currently, the training for navigators and assistants will only be 20 to 30 hours of online training and will contain

tests after each module that can be taken an unlimited number of times.

Has HHS developed an oversight plan? For instance, are there plans to check with individual navigators or assisters to evaluate their job performance? What if there are reports of misconduct and wrongdoing of individual navigators or assisters?

There are conflicting reports if the State requirements for licensing will apply to navigators. It is also uncertain if they will have to carry errors and omissions insurance. It is even uncertain if navigators will face any consequences if they give wrong tax or insurance advice, since they will be dealing with specific tax references that will apply to their next year's tax.

There are also media reports that the director of HHS has made calls to solicit health insurance executives, pharmaceutical executives, and hospitals to donate large sums to nonprofits responsible for the Obamacare outreach efforts. According to The New York Times, several executives said they were uncomfortable with the discussions because the Federal Government has the power to approve or reject the health plans they want to sell in insurance markets that will be run by the Federal officials in more than 30 States. These actions unduly pressure private companies to financially support implementation and promotion efforts, fearing retribution from the Department of Health and Human Services if they do not contribute to organizations like Enroll America.

With the October 1 enrollment period looming, these problems must be addressed now. The Administration must assure us that individuals facing financial security will be protected and that taxpayer dollars will not be abused during the implementation of this law, and the Secretary must stop using unethical, if maybe not illegal, we don't know yet, methods to fund the law's implementation.

I look forward to hearing from our witnesses and further discussing our concerns.

Thank you, Chairman Jordan.

Mr. JORDAN. I thank the chairman.

All right, Mr. Cohen, you are up. Mr. Cohen is Deputy Administrator and Director for the Center of Consumer Information and Insurance Oversight at the Centers for Medicare and Medicaid Services. Just like government to have that long title there, Mr. Cohen. We appreciate you being here. We swear folks in at this committee, so if you will stand up, 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 the gentleman answered in the affirmative.

You are now recognized for five minutes. You know how this works. You have the lighting system in front of you. Make sure you pull the mic close and fire away.

WITNESS STATEMENT**STATEMENT OF GARY COHEN**

Mr. COHEN. Thank you, Chairman Jordan, Chairman Lankford. On behalf of everyone at CMS, Mr. Lankford, we certainly send our thoughts to the people in Oklahoma at this difficult time and certainly will do anything that we can to help out in that difficult situation.

Thank you for the opportunity to discuss the CMS Navigator Program today. Before I begin, I want to note that we have received the letter from the chairs of the subcommittees and are working to provide you and your staff with the information you have requested as quickly as possible.

Over 40 million of our fellow citizens and neighbors live daily with the insecurity of not knowing how they will pay for the medical care which they and their families need. The uninsured are one diagnosis away from medical bankruptcy. They often do not receive the preventive care and early diagnosis and treatment that are associated with better outcomes and lower costs. When the uninsured do seek treatment, it is all too often at the emergency room, and every American business and taxpayer helps pay for the uncompensated care that is provided there.

The new health insurance marketplaces will fundamentally change that reality for these Americans. The marketplaces are precisely what the name describes: a place where consumers and businesses can find health coverage options. Consumers will be able to compare costs, benefits, and cost-sharing in order to choose a plan that is right for them, their families, and their employees. If eligible, consumers and businesses will be able to receive help in paying the premiums through premium tax credits that lower the cost of premiums right away, cost-sharing reductions, or a small business health care tax credit.

Ensuring that consumers and businesses participate in the marketplaces requires, of course, that they learn about the benefits that these marketplaces have to offer and that they get the help they need in order to take advantage of those benefits. This is a significant undertaking.

We know quite a bit about the uninsured Americans we need to reach. Many currently do not have health insurance, so the transaction of selecting, applying, and enrolling in health coverage may be unfamiliar to them.

Twenty percent of the uninsured have not completed high school and nearly 10 percent live in a household that does not have an English-speaking adult. To inform these people about their new health insurance options, information must be provided by people connected to the community in a way that they can understand.

The existing insurance market clearly has not served these millions of Americans well. So while we know that more traditional ways of reaching them, such as the marketing efforts that insurance companies and agents and brokers will be doing will be important, we also know that we need members of the community to speak neighbor to neighbor to get the word out.

For that reason, the Affordable Care Act authorizes, and CMS is implementing, a variety of ways to provide outreach, education,

and enrollment assistance to the uninsured. The Navigator and In-Person Assistance Programs will help Americans enroll in affordable, high-quality coverage beginning on October 1. These programs provide funding for trained helpers who must maintain expertise in eligibility enrollment and program specifics; raise public awareness about the marketplace; provide consumer-focused information and services in an easy to understand, fair, accurate, and impartial manner; and help people enroll in a qualified health plan through the marketplace.

On October 9, CMS published a funding opportunity announcement that uses cooperative agreements to fund navigators in federally-facilitated or State partnership marketplaces. Applications are due on June 7. I am pleased to report that we have received over 830 optional letters of intent from a variety of organizations. We expect to receive a similarly robust number of applications for the Navigator cooperative agreements by the June due date. This high level of interest and the competitive application process will ensure that only the most qualified individuals and organizations will be selected to participate as navigators.

The application process to become a navigator is rigorous and extensive. Applicants must provide detailed information about how they plan to perform the navigator duties, their estimated budget, their track record and accomplishments, and the expertise of their personnel. Applications will be scored by an expert objective review panel and screened by our grant managers to ensure that applicants have the business management capability to successfully perform these duties, and that their proposed budget is allowable and reasonable.

Once the successful applicants are chosen, navigators must complete a 20-to 30-hour long training program and must pass an exam prior to beginning to help consumers. Grantees will be monitored by CMS based on their quarterly financial and progress reports to make sure they are meeting the program's goals, as well as its terms and conditions. CMS may terminate any award for violation of the terms and conditions of the award, including failure to perform award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, management or criminal activity.

HHS awards grants for more than 300 programs, including consumer outreach and education programs, such as the State Health Insurance Assistance Program for Medicare beneficiaries, the nationwide Senior Medicare Patrols Program, and the Connecting Kids to Coverage Program. The Navigator Program follows this tradition of responsible grant-making for consumer education for newly developed marketplaces. We are confident that the Navigator and State-based In-Person Assistance Programs will provide consumers with the high quality help they need as they consider their health coverage options.

I appreciate the subcommittees' interest in this program and would be happy to answer your questions.

[Prepared statement of Mr. Cohen follows:]

STATEMENT OF

GARY COHEN, J.D.

DEPUTY ADMINISTRATOR AND DIRECTOR,
CENTER FOR CONSUMER INFORMATION AND INSURANCE OVERSIGHT,
CENTERS FOR MEDICARE & MEDICAID SERVICES

ON

THE NAVIGATORS AND ASSISTERS PROGRAMS
BEFORE THE

U. S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND
REGULATORY AFFAIRS

MAY 21, 2013

**U. S. House Committee on Oversight and Government Reform,
Subcommittee on Energy Policy, Health Care and the Subcommittee on Entitlements and
Economic Growth, Job Creation and Regulatory Affairs
May 21, 2013**

Good morning, Chairmen Lankford and Jordan, Ranking Members Speier and Cartwright, and members of the Subcommittees. Thank you for the opportunity to discuss the Centers for Medicare & Medicaid Services' (CMS) Navigator program.

Almost 49 million Americans under the age of 65 do not currently have health insurance, sometimes because the cost of insurance is too high or because they have been locked out of the private insurance market because of pre-existing conditions. The percentage of non-elderly uninsured is over 20 percent of the population in many states. Those millions of our fellow citizens and neighbors live daily with the insecurity of not knowing how they will pay for the medical care they and their families need. The uninsured are often one medical diagnosis away from medical bankruptcy. Additionally, the uninsured often do not receive the preventive care and early diagnosis and treatment that are associated with better health outcomes. When the uninsured do seek treatment, it is all too often at the emergency room. American businesses and taxpayers help pay for the uncompensated care that is provided.

The new Health Insurance Marketplaces will fundamentally change that reality for these Americans. The Marketplaces are precisely what the name describes: a place where consumers and businesses can find affordable health coverage options they can rely on. Consumers will be able to easily compare costs, benefits, and cost-sharing in order to choose a plan that is right for them, their families, or their employees. If eligible, consumers and businesses will be able to receive help with the cost of coverage either through premium tax credits that lower the cost of premiums right away, cost-sharing reductions, or a Small Business Health Care Tax Credit.

Ensuring that consumers and businesses participate in the Marketplaces requires that they learn about the benefits that these Marketplaces have to offer and that they get the help they need in order to take advantage of those benefits. This is a significant undertaking. We know quite a bit

about the uninsured Americans we need to reach — many have never had health insurance, so the transaction of selecting, applying, and enrolling in health coverage will be unfamiliar to them. For example, according to a CMS analysis of the 2011 American Community Survey,¹ 20 percent of the uninsured have not completed high school. To effectively reach these populations about their new health insurance options, information must be provided by people connected to the community in an appropriate manner.

For that reason, the Affordable Care Act authorizes, and CMS is implementing, a variety of ways to provide outreach, education, and enrollment assistance to the uninsured. We are leveraging forms of assistance that exist in the insurance market today, like agents and brokers, as well as new forms of assistance provided by the Affordable Care Act. The Navigator and in-person assistance programs that are the subject of today's hearing are two of those programs, but it is important to consider them in the broader context in which consumers and businesses will be able to get help to enroll in affordable, high quality coverage beginning on October 1, 2013.

One way consumers get support today is through agents and brokers, who assist millions of Americans with their health insurance needs. Agents and brokers, including web-brokers, will play a significant role in educating consumers about Marketplaces and insurance affordability programs, and in helping consumers receive eligibility determinations, compare plans, and enroll in coverage. CMS anticipates that agents and brokers will also play a critical role in helping qualified employers and employees enroll in coverage through the Small Business Health Options Programs (SHOPs). We have worked closely with agents and brokers to enable them to assist their clients in obtaining coverage. Guidance released on May 1, 2013, indicates that where permitted under state law, CMS will work with agents and brokers to assist consumers in completing the eligibility application, comparing and selecting qualified health plans (QHPs), and enrolling consumers through the Marketplace, while meeting appropriate privacy standards. We are also working with web-brokers, who provide a valuable service in the market today, and we will make it possible for them to assist consumers and businesses in the new Marketplaces as well. Web-brokers, as well as traditional agents and brokers, will provide an important additional channel for the Marketplaces to reach consumers and to help them enroll in QHPs.

¹ Data set available: <https://data.cms.gov/dataset/The-Percent-of-Estimated-Eligible-Uninsured-People/9hxb-n5xb>

The HealthCare.gov website is the “go to” location for people to obtain information about the Marketplaces and to enroll online beginning in October. This summer, CMS will launch a 24-hour call center for the Marketplace where consumers can receive help with the eligibility and enrollment processes. Also this summer, the chat capabilities for HealthCare.gov will launch, which will enable consumers to chat in real-time with specialists who can help consumers identify and compare QHPs, check their eligibility for affordability programs to help them pay for coverage, and enroll in a QHP once open enrollment begins on October 1, 2013. Eligible consumers will be able to enroll in a QHP online, over the phone, or in person at certain locations. The site will add functionality over the summer so that by October 1, 2013, consumers will be able to create accounts, complete the single streamlined application online, and shop for coverage.

CMS is also working with Federal agencies to reach, engage, and assist potential enrollees. We have an inter-departmental working group that includes a wide range of Federal agencies that is developing ideas and plans to encourage enrollment and distribute information. Other Federal programs will, for example, post Marketplace information on agency websites.

While we are leveraging and creating new outreach initiatives, we know that we need to do more in order to provide information and assistance to reach all eligible consumers in their communities. That is the role of the Navigator and in-person assistance programs. These programs build on our vast experience in providing outreach and enrollment assistance in Medicaid, the Children’s Health Insurance Program (CHIP), and Medicare, including Medicare Parts C and D. As a result, CMS designed Navigator and in-person assistance grant programs that will allow qualified and well-trained individuals and organizations help consumers find and enroll in health care coverage, while adhering to standards and requirements designed to ensure that taxpayer money is used appropriately. The Navigator program, its application process, its terms and conditions, and program integrity oversight are informed by the Department of Health and Human Services’ (HHS) extensive experience. HHS awards grants for more than 300 programs, including consumer outreach and education programs, such as the State Health Insurance Assistance Program for Medicare Part D, the nationwide Senior Medicare Patrols

program, and the Connecting Kids to Coverage program. The Navigator program follows this tradition of responsible grant-making for consumer education for the newly developed Marketplaces.

The Navigator Program

The Affordable Care Act created the Navigator grant program and listed the duties Navigators must perform. The Exchange Final Rule, published on March 27, 2012,² interprets those duties to include:

- Maintaining expertise in eligibility, enrollment, and program specifications;
- Conducting public education activities to raise awareness about the Marketplace;
- Providing information and services in a fair, accurate, and impartial manner, including information that acknowledges other health programs such as Medicaid and CHIP;
- Facilitating selection of a QHP;
- Providing referrals for enrollees with questions, complaints, or grievances about their health plan, coverage, or a determination under such health plan or coverage to any applicable office of health insurance consumer assistance or health insurance ombudsman or any other appropriate state agency or agencies;
- Providing information in a culturally and linguistically appropriate manner, including to persons with limited English proficiency; and
- Ensuring accessibility and usability of Navigator tools and functions for persons with disabilities.

On April 9, 2013, CMS published a Funding Opportunity Announcement (FOA) for \$54 million available in cooperative agreements to fund Navigators in Federally-facilitated or State Partnership Marketplaces, with a minimum amount of \$600,000 available per Federally-facilitated or State Partnership Marketplace service area. Navigator cooperative agreement award applications are due on June 7, 2013.

² Codified at 45 CFR 155.210.

Eligible Applicants

In order to be eligible to receive a Navigator grant, as required in the Affordable Care Act, an applicant shall demonstrate that it has existing relationships or could readily establish relationships with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a QHP. The funding opportunity is open to self-employed individuals and private and public entities. At least two types of entities must serve as Navigators in each Marketplace, and at least one Navigator must be a community and consumer-focused non-profit. Other entities that can serve as Navigators, as detailed in the Affordable Care Act, are trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers who are not compensated from health insurance issuers, and other public or private entities or individuals that are capable of carrying out the duties of the Navigator. Ineligible entities include:

- Health insurance issuers;
- Subsidiaries of health insurance issuers;
- Associations that include members of, or lobby on behalf of, the insurance industry; or
- Recipients of any direct or indirect consideration from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or a non-QHP.

In addition to rules set forth in the law, funding announcement, and regulations, like other entities and individuals seeking to conduct business with the Federal Government, recipients of Navigator grants will be subjected to a robust screening process before grants are awarded.³

³ Entities and individuals are not eligible for a Federal grant, including a Navigator grant, if they are on the Excluded Parties List, which is a list of any entities or individuals who have been suspended or debarred by any Federal agency. Entities or individuals may be suspended from receiving Federal grant money for up to one year based on indictments, information, or adequate evidence involving environmental crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, non-performance, or false statements. Entities or individuals may be debarred from receiving Federal grant money for a longer period of time based on convictions, civil judgment or fact-based cases involving environmental crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, non-performance, or false statements as well as other causes. This careful screening will help to ensure that individuals or organizations that pose a risk to the Federal Government are not awarded Federal Navigator grants.

Application and Award Criteria

Grants will be awarded only to qualified applicants who are well positioned to serve as Navigators. Qualified, unbiased expert contractors will review all applications using an evaluation rubric developed by HHS. Applications will receive a “raw” score out of 100 points. The application will then be ranked using statistical techniques that account for any differences in scoring behaviors among different committees or panels. The CMS Office of Acquisitions and Grants Management oversees the review and evaluation of grant applications to ensure outside reviewers and agency personnel comply with management policies and regulations, and with sound business management practices. The review criteria for the Navigator applications are as follows:

- Type of entity (individual, organization, or consortium) and description of the communities or groups the applicant expects to serve and why the applicant expects to serve these communities.
- Scope of activities, which must demonstrate how the applicant will perform the statutory and regulatory duties of the Navigator, maintain and execute eligibility and enrollment expertise, remain free of conflicts of interest during the term of the grant, provide culturally and linguistically appropriate services, and comply with privacy and security standards, among other activities.
- Budget, which must be complete and reasonable, while ensuring that the funding will not be used for activities already funded through the Marketplace planning and establishment grants.
- Track record and accomplishments, which must demonstrate the applicant’s experience developing and maintaining relationships with stakeholders, assisting consumers, conducting public education and outreach, and working with underserved and vulnerable populations, among other activities.
- Personnel expertise, which must demonstrate the applicant’s expertise in the private health insurance market, program eligibility and enrollment, conducting public education and outreach, and working with underserved and vulnerable populations.

The selection criteria ensure that a highly scoring applicant will be experienced and knowledgeable about the health insurance market and community, and be prepared to perform

the services required of a Navigator. Applicants without relevant experience, responsible budgets, or the ability to perform the required duties of a Navigator will not receive high scores.

Terms and Conditions of the Award

Navigator awardees must complete a training program, including approximately 20 to 30 hours of an HHS-developed training program, and pass an exam prior to beginning to help consumers. The Notice of Proposed Rulemaking (NPRM) for Navigator Standards,⁴ published on April 5, 2013, includes a detailed discussion of our proposed training standards for Navigators in the Federally-facilitated and State Partnership Exchanges. The proposed standards were designed to ensure that Federal Navigators will have expertise in eligibility and enrollment rules and procedures, the range of QHP options and insurance affordability programs, the needs of underserved and vulnerable populations, and privacy and security requirements applicable to personally identifiable information.⁵ In addition, to receive a Federal Navigator grant, the awardee would be required to meet any licensing, certification, or other standards prescribed by the state or Marketplace, if applicable. The proposed rule would further clarify that this requirement applies so long as state Navigator standards do not prevent the application of title I of the Affordable Care Act.

CMS is designing specialized training suited to the particular role and duties of Navigators as set forth in the Affordable Care Act, Exchange Final Rule, and proposed Navigator rulemaking. For example, under the proposed rule, Navigators would receive instruction in, for example, the following areas:

- QHPs (including the coverage “metal” levels), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
- Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

⁴ 45 CFR Part 155: <http://www.gpo.gov/fdsys/pkg/FR-2013-04-05/pdf/2013-07951.pdf>.

⁵ The Exchange regulations, at 45 CFR 155.260(a), establish privacy and security standards for Exchanges, and § 155.260(b) provides that Exchanges must require Navigators and other non-Exchange entities to abide by the same or more stringent privacy and security standards as a condition of contract or agreement with such entities.

- Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
- Understanding differences among health plans;
- Privacy and security standards for handling and safeguarding consumers' personally identifiable information;
- Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations;
- Applicable administrative rules, processes, and systems related to Marketplaces and QHPs.

Once a Navigator award is made, the funds will be posted in recipient accounts established by the HHS Payment Management System, which is run by the Division of Payment Management. The Division of Payment Management has over 30 years of experience providing grant and grant-like payments, cash management, and grant accounting support services to Federal agencies. The custom-developed Payment Management System provides the tools to manage grant payment requests and disbursement reporting activities by leveraging efficient business processes, state-of-the-art information technology, E-Government initiatives, and business expertise to build a critical link in the operation of Federal financial assistance programs. The system is fully automated to receive payment requests and reconcile the requests for accuracy and content.

Upon notification of award, recipients under this announcement will be able to draw down funds for approved start-up costs. The remaining funds will be available only upon meeting required milestones. HHS may terminate any award for material noncompliance, including, but not limited to, violation of the terms and conditions of the award, failure to perform award activities in a satisfactory manner, improper management or use of award funds, or fraud, waste, abuse, mismanagement, or criminal activity.

Additionally, awardees must agree to cooperate with any Federal evaluation of the program and must provide required quarterly and final progress reports. The reports will outline how cooperative agreement funds were used, describe program progress, describe any barriers

encountered including how potential conflicts of interest were mitigated and process for handling non-compliant staff or volunteers describe how the program ensured access to culturally and linguistically appropriate services, and detail measurable outcomes including how many staff and volunteers completed training and became certified Navigators and how many consumers were served. All grantees must submit the Federal Financial Report to report cash transaction data, and expenditures. Federal Navigator awardees will also be subject to the Federal Funding Accountability and Transparency Act Subaward Reporting Requirement, HHS Grants Policy Statement, applicable cost principle regulations, Office of Management and Budget audit requirements and circulars, and the reporting and certification requirements that will be provided with the Navigator Notice of Award and Terms and Conditions.

Along with these reporting requirements, CMS will have substantial oversight and involvement with the Navigators. CMS will host opportunities for additional training or networking, will facilitate coordination with other relevant Federal agencies, will work with the recipients to continuously improve the program, and will assign specific program officers who will monitor the progress of each recipient by the phone, document review, on-site visits, and other appropriate means. The HHS Grant Management Process reflects established grant policies and regulations and is designed to ensure that grants serve the American public's interest in well-managed grant programs.

State-Based Marketplaces and their Navigator/In-Person Assistance Programs

Many state-based Marketplaces have been hard at work planning their consumer outreach, including conducting statewide marketing research, holding focus groups and surveys, and creating reports that include the best messaging for outreach materials for their specific communities.

State-based Marketplaces must comply with the parameters of the law and implementing regulations on the Navigator program but have the flexibility to require more stringent training and exam standards for their Navigators, as well as the flexibility to create Navigator programs best suited to conditions in their states. For example, Vermont has designed its Navigator and in-person assistance programs so that a subset of organizations will do the majority of the

outreach and education, while up to 22 grantees that will provide more geographic and audience-specific outreach. Meanwhile, New York's Navigator program is modeled on successful community assistance programs in New York, and is designed to meet the needs of New Yorkers by providing assistance through community-based organizations. New York plans to provide grants to a diverse group of organizations that will provide high-quality enrollment assistance in all counties and boroughs of the state.

Conclusion

Beginning October 1, 2013, eligible consumers who need health coverage will be able to log on to HealthCare.gov to shop for affordable coverage or will be able to receive assistance in choosing the health coverage that best fits their needs. Navigators are just one part of a comprehensive outreach plan that includes agents and brokers and certified application assisters, as well as other Marketplace outreach activities that are being conducted by CMS and other Federal entities, state and local governments, and the private sector. Together, these important resources will help millions of uninsured Americans gain the security of being enrolled in health coverage. We are confident that the Navigator and in-person assistance programs will help provide consumers with the high quality help they need as they consider their health coverage options. Building on years of experience, CMS has designed a program that will fund only the top applicants, who are most qualified to serve their communities in this capacity, and ensure that they are well-trained, meeting objectives and using grant funding appropriately. I look forward to working with you and keeping you informed as we continue this important and intensive work to provide more affordable health coverage to more Americans.

Mr. JORDAN. Thank you, Mr. Cohen. Forty seconds to spare. We appreciate that.

The gentleman from Oklahoma is recognized for five minutes.

Mr. LANKFORD. Mr. Cohen, thank you for being here, and this is a brand new program, so we will have additional questions as you are pulling this together, and the CMS team and HHS, and for us, as well, as we are trying to oversee it and understand it a little bit more.

What is the difference between a navigator and an assister?

Mr. COHEN. The functions are essentially the same. The difference is that we really responded to requests from a number of States, recognizing that they have to have a Navigator Program that cannot be funded from Federal grant funds.

Mr. LANKFORD. Right.

Mr. COHEN. But in the first year of the program they also have an obligation, that is in the statute, to provide outreach and assistance to help people get enrolled, and in the first year of the program they don't have a funding source, which will come into place through user fees and so forth once the program is operational.

Mr. LANKFORD. So is there a statutory authority, then, to create this State-based Navigator Program?

Mr. COHEN. The statutory authority is the requirement in the Affordable Care Act that State-based exchanges and all exchanges provide outreach and education and enrollment assistance to people.

Mr. LANKFORD. So you make an assumption that because the law says you need to have this, even though the law specifically states that only navigators go to Federal exchanges, you just assume they wrote the bill wrong and they meant you should also have this other program? Because I am trying to figure out the statutory authority to it. And I hear the assumption that you assume they are going to do it, and States like California, Colorado, this past week came up and said, hey, we don't have near enough money to be able to do this, asked for another \$14 million just for their Assister and Navigator Programs; say we were promised enough, this is not enough. I get their frustration in trying to implement the law, I am just trying to figure out the statutory authority of creating a program that the law specifically says you just do this.

Mr. COHEN. Well, the In-Person Assister Program is a program that is separate from the Navigator Program, it is a transitional program.

Mr. LANKFORD. But it is pretty much the same.

Mr. COHEN. The function that the people will be performing is very much the same.

Mr. LANKFORD. So is there a reason you wouldn't call it State navigators and Federal navigators, just use the same term; these are State-funded navigators or these are Federal-funded navigators?

Mr. COHEN. Well, State-based marketplaces are required to have a Navigator Program that they fund. But as a transitional program during the establishment of the exchanges, only in the first year and before they are financially sustainable, States came to us and said—

Mr. LANKFORD. We don't have enough money.

Mr. COHEN. That is right.

Mr. LANKFORD. Okay. We will have some follow-up on that.

You mentioned in your opening statement about only the most qualified will be the individuals in there. I assume that you are requiring some basic background checks, that you are requiring some of the things to be able to prove these are only the most qualified. These will be folks that will have some familiarity with health care in the background or insurance in the background; they have gone through a background check; they have gone through a fingerprinting, you know that? Is that my assumption as well?

Mr. COHEN. So I think if you look at the funding opportunity announcement you will see that the successful applicants will demonstrate both a past history of knowledge and expertise in this area and a track record of working in the community successfully in this area, as well as—

Mr. LANKFORD. So a background in health care or a background in insurance, as well as a connection with the community?

Mr. COHEN. One of the requirements that will be scored in the grant selection process is showing expertise in the private health insurance market—

Mr. LANKFORD. I am sorry, Mr. Cohen, I don't mean to interrupt. That is for the organization. What about for the individuals that are actually going to be the navigators on the ground? Will there be a background check; will there be a requirement of competence beyond the 20 or 30 hours of online training?

Mr. COHEN. We have left the States' flexibility to determine what specific checks need to be made on the individuals who will be performing this function.

Mr. LANKFORD. So can the State, then, require to have a licensing as well?

Mr. COHEN. What we have said is that State licensing is permitted. The only thing that is not permitted is requiring an agent broker license.

Mr. LANKFORD. Would they be required like many States, my State included, that they have errors and omissions insurance if you are handling insurance information? So if they give someone bad advice, for instance, if they are going to advise them, say, here is how much your subsidy is, but if they punched it in wrong, next year that individual is going to get a huge tax bill. So this person is giving tax advice at their door, basically, as well as health care advice. Will there be some errors and omissions insurance required; will that be allowed by States as well?

Mr. COHEN. So I actually don't think that navigators are going to be giving tax advice, Congressman. I think that is really kind of a misconception of their role.

Mr. LANKFORD. Will they help determine are you eligible for the subsidy?

Mr. COHEN. No, they will not. That will be determined through the application process that each person will have to go through, where they enter certain information about their financial situation, and the navigator will help them to do that, but the navigator is not going to be giving them tax advice.

Mr. LANKFORD. Can I ask just a quick question, as well, on the background? Would you assume that the individuals that are navi-

gators that have access to Social Security numbers, private health care information as far as their insurance companies and such, they would have the same standards as census workers, for instance, that are doing a headcount in the house? They are going to walk away with an awful lot of private information when they walk away from this door, so would they have the same standards as a census worker?

Mr. COHEN. So I would make two points. First of all, they won't walk away with any private information. The private information will be entered through the application process, but the navigators are specifically going to be trained and directed not to retain any private information.

Mr. LANKFORD. So is there any way to verify that? I get that is the desire, but there has to be a verification that they are not walking away with a pretty big database of that community.

Mr. COHEN. Sure. And we will be doing an oversight process and it is punishable by a fine of up to \$25,000 if you steal somebody's personal information, so it is a pretty significant thing. But the other thing I would say, Congressman, is I think that these folks are going to be comparable to what we have seen for many, many years in the State Medicare programs, where they have had people who have assisted in getting folks enrolled. It has been extremely successful in the CHIP program, where they have had people who have helped getting people enrolled, and I am not aware of any problems that have occurred in those programs in terms of the kind of thing that you are mentioning, so I don't expect we will see them here.

Mr. LANKFORD. Well, I am going to yield back, but I can say in my State there is already some questions about licensing and brokers, errors and omissions insurance, and all those things that we assume are going to be a part of this that are in our State law that now we feel like we are getting some push-back on to say, no, you will have your group and we will have our group, and though they are handling insurance they really are not handling insurance. So there will be some questions and we have to figure out the process on that. The letter that we sent to you a while back, some of those details will actually help us to be able to get some of the information as well.

I yield back.

Mr. JORDAN. I thank the gentleman.

The gentlelady from the District of Columbia is recognized.

Ms. NORTON. Thank you, Mr. Chairman.

I would like, Mr. Cohen, to see if we can put what you are doing in some context. One would think this is an unprecedented program, but you just mentioned some of the programs that required outreach in the past. Many of us are familiar, of course, with the Children's Health Insurance Program, Medicare Part C and Part D. Were these in any way models for Navigator? Is there something different between the outreach that was used for Medicare C and D or S-CHIP and what you are doing now?

Mr. COHEN. I think we definitely tried to learn lessons from those previous programs and, as you know, since TRIPA was enacted, for example, CMS has given out grants to over 100 grantees, including schools, community organizations, provider groups, faith-

based organizations, tribal entities, and so forth, to help kids get enrolled in that program. The same thing is true of the State programs to help people get enrolled in Medicare. And we looked at all those different programs. I actually think that what we are doing with the Navigator is at least as rigorous, or more, of an application process and a review process has been true in those programs.

Ms. NORTON. Well, out of those programs, since these programs go back some years, have there been a set of best practices that have informed how you have created the Navigator Program?

Mr. COHEN. Exactly. That is right. And we know that community-based application assistance itself is a best practice when it comes to helping people to get enrolled in programs such as Medicaid and in CHIP and in Medicare. Person-to-person assistance delivered by trusted individuals is really the best way. So this is not a bunch of people from Washington flying in to tell people this is what you ought to do; this is people in the community who have a history in the community, are trusted in the community, who are going to be providing this assistance.

Ms. NORTON. But apparently there are two entities who are navigators in each marketplace, one is consumer-based off a nonprofit. Would you tell us about this two-layered approach? What is the difference between the navigators?

Mr. COHEN. I think that what the statute contemplates is that at least one of the two navigators that is required to be in each State be a nonprofit consumer group and then the other can be something else.

Ms. NORTON. For example?

Mr. COHEN. It could be a hospital; it could be a labor union; it could be a Native American tribe. There are a variety of different types of organizations that serve the community that would qualify.

Ms. NORTON. So the two-layered approach is necessary for what reason?

Mr. COHEN. I think it is just to ensure that we have a variety of different types of organizations. Of course, anyone serving as a navigator may not have any sort of conflict of interest or financial benefit from the insurance industry, so that applies across the board. But I think the idea was to make sure that there would be at least one group that had a history of serving consumers in that community.

Ms. NORTON. Well, that, I applaud you for. Instead of using only, pardon the pejorative, bureaucrats, you are also using people from the community, training them and sending them into the community with the right kind of best practices background.

Thank you very much, and I yield back.

Mr. JORDAN. I thank the gentlelady.

Now recognize the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Thank you, Mr. Chairman.

Thank you, Mr. Cohen. Just to go back to the gentleman from Oklahoma, when he asked you about statutory authority for the as-sisters, was your answer that, yes, there is statutory authority or no, there is not explicit statutory authority?

Mr. COHEN. There is statutory authority because the statute requires that exchanges provide outreach education and enrollment assistance to consumers. That is the statutory authority. That is the function that has to be performed by the exchanges.

Mr. DESANTIS. So when the HHS folks briefed the committee staff and they said there was not statutory authority, they were incorrect?

Mr. COHEN. Well, I wasn't there, so I can't speak to what they said or didn't say, or what folks heard or didn't hear. But I'm telling you—

Mr. DESANTIS. Well, if they said that, I am asking you if they said that, they would have just been mistaken and not understood the law, correct?

Mr. COHEN. We have statutory authority for the In-Person Assister Program, yes.

Mr. DESANTIS. Okay, now, in terms of the goal, as I read the statute, that these navigators are supposed to provide fair, impartial, and accurate information about this program, correct?

Mr. COHEN. Yes.

Mr. DESANTIS. And so, for example, California, they are now trying to develop a system where they are paying these navigators per enrollment, and they say the reason for that is they want to incentivize enrollment. But if there is a conflict between incentivizing enrollment and providing fair and accurate information, the navigator would have to provide fair information, even if it may lead somebody to not enroll, correct?

Mr. COHEN. They have to provide fair and accurate and impartial information, yes, regardless of what the decision is.

Mr. DESANTIS. Right. So, for example, the way the law is structured, you have this tax or mandate that applies to folks who do not get insurance, but then you also have a must-issue provision so that if people do develop a condition, they still will get insurance issued to them. And I think the cost for an individual is about \$95 in 2014 for those who choose not to get insurance.

So my question for you is will navigators be required to inform applicants that their failure to purchase insurance will lead, in some instances, to a penalty that is actually cheaper than the cost out of pocket to them to maintain insurance?

Mr. COHEN. Navigators would be required to provide accurate, fair, impartial, and truthful information with respect to all aspects of this, including the potential penalties.

Mr. DESANTIS. So they would have a duty to affirmatively provide this information.

Mr. COHEN. Well, ordinarily, people that navigators will be dealing with are going to be people who want health insurance coverage; that is why they are going to find their way to a navigator. So I don't know that they are going to say to every person who comes in the door, well, if you don't get health insurance, you might have to pay a penalty of \$95. But if they are asked a question, they will give a truthful, accurate answer to the question.

Mr. DESANTIS. Well, in California they are doing this to try to incentivize it, so they must feel that there will be some folks that they are trying to reach who are not going to be actively seeking it. So will navigators be required to tell individuals that they can

wait until they develop a condition or get sick to purchase insurance without facing a financial penalty?

Mr. COHEN. Well, that would be inaccurate because the people will only be able to sign up for insurance during an open enrollment period, just as is true of the market today.

Mr. DESANTIS. Well, how does that work? So if I have a job and I have insurance, and I have a preexisting condition and I lose my insurance or I find myself developing a condition through no fault of my own, I would actually have to wait? I thought this law provided for coverage for preexisting conditions? That was one of the main things that I heard. So there may be people, through no fault of their own, who are having to wait until an enrollment period, which could be six, eight, ten months.

Mr. COHEN. Well, I think you have confused a couple different things. There are circumstances in which what is called a special enrollment period. This is the same as in the market today, nothing different. If you lose your job, for example, and you lose your coverage through your employer, then you would have an opportunity to get enrolled and coverage on an individual basis.

But normally, without some event happening that allows you to have a special enrollment period, the open enrollment period for the first year will run from October through March, and then there will be an open enrollment period in subsequent years, just as there is today. And you are right that when you go to enroll in coverage, the law says that insurers may not decline to give you coverage because you have a preexisting condition, but that doesn't mean that you can wait until you get sick and then sign up. You are taking a risk if you don't sign up during an open enrollment period that you may get sick and may not be able to sign up until the next open enrollment period.

Mr. DESANTIS. Or if you don't qualify for one of the special enrollment, even if you are not trying to game the system.

Mr. COHEN. That is true.

Mr. DESANTIS. You would be in a tough situation there. Okay, well, thank you, Mr. Cohen.

I yield back the balance of my time.

Mr. JORDAN. I thank the gentleman.

I now recognize the ranking member, Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And thank you, Mr. Cohen, for coming here today and sharing your thoughts with us. I think by now everybody understands the way insurance works. The more people who are in the pool, the more diversified the pool, the lower the costs are for everybody. And the same basic principle applies to health insurance; the more people who are enrolled in health exchanges, the lower the cost is going to be for health care for everybody. Is that a fair statement, Mr. Cohen?

Mr. COHEN. It is a fair statement. And I would add one more thing. Because, if people show up at an emergency room without health coverage, they may get treated anyway, and so there is a lot of uncompensated care. So we have an additional problem in addition to the one that you have identified. We have an additional problem that we are paying for a lot of this uncompensated care today that isn't covered by insurance.

Mr. CARTWRIGHT. So the more successful the Navigator Program is, the more people are going to be enrolled and the lower the cost of health care is going to be for everybody in the Nation. Isn't it true that the navigators are going to help assist people who might otherwise not know about how to enroll in the health exchanges?

Mr. COHEN. Exactly right.

Mr. CARTWRIGHT. Now, isn't it also true that more people are going to enroll in the health exchanges due to the work of the navigators than would otherwise enroll if Congress had not created the navigator function, Mr. Cohen?

Mr. COHEN. That is true. And we know that particularly from our experience with Medicare and Medicaid and CHIP that that is true.

Mr. CARTWRIGHT. That is they don't know about the program, they are just not going to enroll in it.

Mr. COHEN. Right.

Mr. CARTWRIGHT. And we are talking about people, a majority of whom were previously uninsured, is that correct?

Mr. COHEN. Yes.

Mr. CARTWRIGHT. So these are people that kind of could use some guidance on how to sign up for health insurance, right?

Mr. COHEN. That is right.

Mr. CARTWRIGHT. Now, Mr. Chairman, I think it is pretty obvious that what is happening here at this hearing is by going after this Navigator Program, the majority is really attacking both the new access to health insurance coverage for millions of previously uninsured Americans thanks to the Affordable Care Act and lower health insurance costs that everybody is going to enjoy in this Nation once the health exchanges extend coverage to everybody eligible under the law.

Now, Mr. Cohen, I want to ask you a study by the Kaiser Family Foundation estimated that 65 percent of the people enrolling through an exchange will have been previously uninsured. Is that correct?

Mr. COHEN. Yes, I am familiar with that.

Mr. CARTWRIGHT. Have you seen that figure?

Mr. COHEN. I have.

Mr. CARTWRIGHT. And many individuals who are now eligible for health insurance are unaware of what a health exchange is and how it can benefit them. For these individuals, how important is it that we do outreach and education activities?

Mr. COHEN. I think it is extremely important, and I think it is important that we do it in a variety of different ways that reflect the great diversity of this Country and the different kinds of people who live in it, and that we make sure we target as carefully as possible so that we reach as many as possible.

Mr. CARTWRIGHT. Now, is it safe to say that many of these previously uninsured individuals who will now have access to health care coverage are unfamiliar with the terms and options that they will need to get through when seeking coverage?

Mr. COHEN. I think that is true.

Mr. CARTWRIGHT. And some of these consumers may have other individual limitations which make it particularly difficult for them

to make informed health plan choices. Would that be correct as well?

Mr. COHEN. Yes.

Mr. CARTWRIGHT. Given these prior barriers to coverage, how critical will navigators be in helping Americans gain access to the health care benefits available to them?

Mr. COHEN. Navigators are very critical in particular, as you mention, in helping people who do have barriers such as disabilities, limited English language proficiency, and other obstacles.

Mr. CARTWRIGHT. Now, Mr. Cohen, in your testimony you stated that ensuring that consumers and businesses participate in the marketplaces requires that they learn about the benefits that these marketplaces have to offer and that they get the help they need in order to take advantage of the benefits. How are the navigators going to assist small businesses participating in health insurance exchanges and what kind of help is available to small businesses participating in the health insurance exchanges?

Mr. COHEN. Small businesses are eligible if they have 25 or fewer employees and they are otherwise eligible for a small business tax credit, and navigators will be able to help small business owners understand their eligibility for the tax credit and also help them in selecting a plan that is good for their employees and for their business.

Mr. CARTWRIGHT. Well, thank you, Mr. Cohen, for helping explain how the navigators assist making our new health care law work, and I yield back, Mr. Chairman.

Mr. JORDAN. I thank the gentleman.

I now recognize the vice chair, Mr. Gosar.

Mr. GOSAR. Thank you, Mr. Cohen.

Thank you, Mr. Chairman.

I am confused. I am very confused from what I have been hearing from my colleague from Florida and the gentleman just before me. I want you to describe this navigator, so I am going to ask you a number of questions. Yes or no would be a great answer.

So you would require a high school diploma, yes or no?

Mr. COHEN. It is really not a question I can answer yes or no.

Mr. GOSAR. That makes my point. This is getting complicated. So let me ask you, they have to have insurance knowledge, yes or no?

Mr. COHEN. The grantee recipient has to demonstrate, as part of the process for applying, insurance knowledge and also it has to maintain that knowledge through the course of informing.

Mr. GOSAR. I am glad you did that. So what is the checks and balances in that educational process? Is somebody coming and visiting with that navigator or is it done online?

Mr. COHEN. In terms of the course that they are taking?

Mr. GOSAR. Absolutely.

Mr. COHEN. The course that they are taking is going to be an online course, just as it is for agents and brokers in many States today.

Mr. GOSAR. And there is no other checks and balance?

Mr. COHEN. No. So there is a very rigorous grant oversight process that we follow that is the same type of process that we follow in all of the grants that CMS administers and HHS administers.

There will be quarterly and annually reports, there will be financial review, and there can be site visits as well.

Mr. GOSAR. I understand. I have a limited amount of time.

The gentleman that you had a conversation with that there are special needs so that you are going to have to be very aware of special needs. That does not describe to me somebody that has a very simple objective or a basic education, does it not? Oh, by the way, I have been doing this for 25 years; I am a dentist. So I have dealt with insurance. It is not an easy issue and it is not what 20 and 30 hours can actually oversee.

When you are talking about special needs people, it takes an awful lot of compassion and actually have walked in their moccasins, as we say in Arizona, a long time to understand how that application means. So when you look at 20 to 30 hours, that is inadequate, absolutely inadequate.

Let me ask you the next question. How can you guarantee for me that a convicted felon wouldn't utilize this information and be actually able to participate as a navigator?

Mr. COHEN. I don't see that, really. If you look at the process of what organizations and people are going to have to go through to get these grants, and you look at the history that we have had of doing similar types of programs in Medicare and Medicaid and CHIP, where I am not aware of any of those kinds of problems, so we can speculate—

Mr. GOSAR. No, no, no, no, no. I am glad you brought that up. So there is no fraud and deceit within some of these programs like Medicaid? In fact, I want you to go back to what we have seen here over the last year with deceitful actions in regards to applications of processes in Medicaid and Medicare. So let's not go there.

Mr. COHEN. But that is not what I said. What I said is I am not aware, and would be happy to hear, about problems with application assisters helping people and committing some kind of fraud.

Mr. GOSAR. Well, I guess what I am getting at, this isn't a simple process, and what you are belaboring here is that this is a simple process and that this person can be pretty much anybody looking at both health care, as well as insurance. And then the second part is we are only going to be dealing with, for the most part, people like my colleague from Florida said, actually looking for health care. Wouldn't it be behooving people to sign up because we want a bigger pool, like the gentleman that just spoke prior to me in regards said, the bigger the pool, the better insurance rates? So you are going to be engaging people who you are engaging on door-to-door knocking, could it be not?

Mr. COHEN. Outreach and letting people know about the benefits of getting health insurance coverage can provide for them is part of the function of a navigator, yes.

Mr. GOSAR. So we are going to come back to this. So we do have some minimum requirements for this navigator or assister, do we not?

Mr. COHEN. Yes.

Mr. GOSAR. And what are those?

Mr. COHEN. Well, in order to get a grant, they have to demonstrate a track record of work in the community, expertise of the

personnel who are going to be doing the work, and a plan for how they are going to perform the work and a budget.

Mr. GOSAR. And I want to go back to that working in the community. You said that there is no worry about this information. Well, when you give somebody your Social Security number and give tax records, which they will be able to access, right?

Mr. COHEN. The navigator will not be receiving people's information; the information will be submitted through an application that the navigator can assist with, but the navigator is not collecting this information. And again I would point out application assisters in Medicaid and Medicare and CHIP do the same thing, and Social Security numbers are required in those programs as well.

Mr. GOSAR. Thank you. I am out of time.

Mr. JORDAN. I thank the gentleman.

Now recognize the gentlelady from New Mexico, Ms. Lujan Grisham.

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

And thank you for being here today, Mr. Cohen. I want to do maybe a couple of things in reaffirming there are many public programs where we have not only required, but, because we didn't require it up front, had limited enrollment and misinformation about a variety of health care programs from veterans' benefits to Medicare to senior citizens programs and Medicaid. So I will get back to that in a second.

And I appreciate that, that we want navigators or assisters to be accountable and effective so that people get the best information, but I am stymied that so far in this hearing we are more concerned about background checks and those qualifications for people who would be navigators and outreach specialists, than we are for people who would, today, buy a firearm. And I want to point out that we have incredible success with outreach and health care benefits programs. For example, when we did Medicare Part D, in spite of the fact that we had a national hotline and a variety of nationally-based information programs, most States had to provide additional supportive information because it was too hard to make the decisions about the independent prescription drug insurance benefits that were available.

For at least 20 years, that I am aware of, States have operated in their aging programs health insurance and benefits assistance corps. Most States don't require fingerprinting or background checks, they don't require that folks have to have a high school education, maybe a GED; but that they work on is have those folks gone through a rigorous training program, do they understand the benefits and the complexities between the health care delivery system, private insurance, and the social programs or social insurance programs like veterans' Medicare and Medicaid, so that you can help someone navigate those complexities.

And I would also submit that the high back program was one of the most effective programs at identifying fraud and waste, which created then the Operation Restore Trust Program. I am going to highlight also, and I am going to ask if you are familiar with those, that this program was a very successful program for both veterans, Medicaid recipients, and Medicare Part D enrollees.

So we will start there. Are you familiar with the high-back program and related programs by States?

Mr. COHEN. I am actually not. I am familiar with State health insurance and assistance programs and a number of States that have provided in-person assistance for people to help them get enrolled in Medicare and Part D.

Ms. LUJAN GRISHAM. Are you aware that in many States, including New Mexico, we have looked at, for the high-risk pools, because, again, it is also, even though it is a very finite eligibility context for those programs, both State high-risk pools and Federal high-risk pools, the States have incentivized agents and brokers to understand the difference between the Federal pool, the State pool, Medicaid, Medicare, Medigap. Because what you want, people who have Medicaid have far better coverage than people in a traditional insurance plan through the pools.

Mr. COHEN. Yes.

Ms. LUJAN GRISHAM. And are you aware of the significant fraud or privacy protection problems for any of those States, including New Mexico, my home State, who are engaged in those operations?

Mr. COHEN. I am not.

Ms. LUJAN GRISHAM. My last context here for questioning, and I agree with the statements that have been made before, that if you don't do this outreach, people don't know. People on Medicare cannot describe to you their benefits. People on private insurance cannot adequately describe their co-pays, their benefits, their authorizations, their referrals. They have difficulty navigating for their own taxes today what was their health care costs or tax deductibles that are out-of-pocket versus those that are not. It is complicated. We all understand that.

Are you engaging in specific efforts for a State like New Mexico—and I realize I am leaving you very little time—to use navigators in places like the Navajo Nation, with 21, if you don't count the Navajo Nation, independent, with independent languages, tribes, a large Asian-American and Hispanic community? What are we doing to make navigators successful in that context?

Mr. COHEN. Thank you. As you know, we have an obligation under the Affordable Care Act to do tribal consultation, which we do on a regular basis, and we are working very closely with the tribes to make sure that Native Americans are aware of the benefits of the Affordable Care Act and some benefits of the Affordable Care Act that are particular to Indians that are even better than are true for the rest of the population. We very much encourage tribes to apply to be navigators because we think that would be one very effective way that they can reach their community. So that is an area that we definitely have put some very particular focus on.

Ms. LUJAN GRISHAM. I have a few seconds left, Mr. Chairman, before I yield back. I would point out that—maybe I am doing the opposite clock now, I just saw that. But if I might just finish that, Mr. Chairman.

Mr. JORDAN. You are fine.

Ms. LUJAN GRISHAM. I might argue with you that the benefits under the Affordable Care Act are not more robust for a Native American community, but notwithstanding the fact that they are sorely under-insured in an Indian health service, and notwith-

standing frontier and rural access, it is a huge problem; and for my State, where we have a more than 21 percent under-insured, with one of the poorest and sickest populations in the Country, we are going to need navigators and assisters and outreach and education efforts to facilitate, which is required under the Act, to facilitate enrollment to the highest degree.

Thank you. No further questions. I yield back.

Mr. COHEN. And I was just referring, really, to the provisions on cost-sharing, which are a little bit different for Indians.

Ms. LUJAN GRISHAM. Fair enough.

Mr. JORDAN. I thank the gentlelady.

Mr. Cohen, Senator Baucus has said implementation of the Affordable Care Act is a huge train wreck. Is he right? And let me just say this. He wrote the bill; he has a distinguished career in the Senate. He was intricately involved in writing the bill over there. He is a guy who comes with some expertise, a number of years serving in Congress. So when he says something, it means something. Is he accurate?

Mr. COHEN. I don't agree with Senator Baucus' statement. I think we are very much on schedule; we are moving forward. We are going to be ready October 1st for open enrollment to begin.

Mr. JORDAN. So Senator Baucus is wrong?

Mr. COHEN. Well, I am not sure exactly what he is referring to or what he meant.

Mr. JORDAN. He said implementation of the Affordable Care Act is a huge train wreck. He didn't say it is complicated; he didn't say what you said in your opening statement. You said this is a significant undertaking. He could have used that kind of language. He didn't choose to use that language, he said it is a huge train wreck. So I am asking is he accurate in his assessment of what is coming to the American people.

Mr. COHEN. I disagree with Senator Baucus' statement.

Mr. JORDAN. So the guy who helped write the bill in the Senate is wrong. You are saying maybe he is 71 years old, he is losing it, he doesn't have it anymore? What are you saying?

Mr. COHEN. I disagree with Senator Baucus' statement. We are doing very well; we are moving forward. We just recently completed receiving submissions—

Mr. JORDAN. Do you think you can do it? Do you think you can get ready?

Mr. COHEN. Yes. We will be ready.

Mr. JORDAN. Here is my understanding. You don't start training these navigators. They get these navigators, assisters, and the confusion that exists around this. What I do know is the money goes out like August 15th, is that right, this year?

Mr. COHEN. Yes.

Mr. JORDAN. And then, a few weeks later, they are supposed to be out there signing people up. I mean, normally, when you have a new product, you don't need people out there telling folks they have to do it; people find out, well, if it is a good product, I will sign up on my own. So August 15th this all starts, and then the enrollment runs through what, October 1st through March, is that right?

Mr. COHEN. Correct.

Mr. JORDAN. And you think you can get it all up and running in that time, even though the guy who helped write the bill, who was intricately involved, has a distinguished career in the Senate, calls it a huge train wreck?

Mr. COHEN. It will be up and running, and it will be ready. And I would like to point out navigators are not the only way that people are going to learn about this law and are going to get help.

Mr. JORDAN. They are learning now. I talk to business guys. They are learning now, trust me. We know what is coming. Go ahead, I am sorry. I just talked to a bunch of business guys yesterday.

Mr. COHEN. Agents and brokers are going to be out there helping people get enrolled; the insurance industry itself, obviously, has a tremendous interest in getting people enrolled.

Mr. JORDAN. Let me ask another question, another thing that is on people's minds. The American people have heard what Senator Baucus called the implementation of this bill. I think they understand what train wreck means versus a significant undertaking. But let me ask you this, because in my opening statement I referenced the situation with the Internal Revenue Service, and Ms. Norton said that that was a stretch to tie that in, but I just want to know, isn't it true that the Internal Revenue Service is intricately involved with implementing and enforcing the Affordable Care Act?

Mr. COHEN. The Internal Revenue Service has a significant role in overseeing tax provisions insofar as they are implicated in the Affordable Care Act, not everything about the Affordable Care Act.

Mr. JORDAN. You just answered Mr. Cartwright's question that one of the things these navigators are going to be out doing is, when they talk with small businesses, they are going to be giving them tax advice. So there is that component as well. So the IRS is involved, significantly, you said, correct?

Mr. COHEN. The IRS is involved, yes.

Mr. JORDAN. And I just want to know since they are involved and since you are intricately involved in all this, does it trouble you what is going on with the Internal Revenue Service, this scandal that has been uncovered? Does that trouble you as an American, that someone who is involved in putting together the implementation of the Affordable Care Act?

Mr. COHEN. You know, it is not my job to oversee what the IRS does. I don't see a connection between what I have read in the newspaper and what we are doing.

Mr. JORDAN. Has HHS transferred any Federal tax dollars to the Internal Revenue Service for the significant portion that they are involved with in enforcing Obamacare? And, if so, how much money?

Mr. COHEN. I don't believe HHS has transferred money to the IRS. I don't know the answer, frankly.

Mr. JORDAN. My understanding is it is hundreds of millions of dollars that have moved to the Internal Revenue Service for the enforcement of this.

Mr. COHEN. Well, the Internal Revenue Service certainly has gotten funding for its part of implementing its role in connection with

the Affordable Care Act. Whether that money came from Health and Human Services, I don't know the answer to that.

Mr. JORDAN. And as someone who is so involved in this issue, do you find it troubling at all that the agency who has a significant role in enforcing the Affordable Care Act was systematically targeting groups who came into existence because they initially opposed the Affordable Care Act? And the date that the targeting started, according to the inspector general's report, the date that the targeting started was the very month that the Affordable Care Act passed, March of 2010. Do you find that at all troubling, as an American citizen? First Amendment rights were obviously violated in this thing. Do you find that as cause for concern?

Mr. COHEN. Congressman, I would be happy to have a beer with you and talk about what I think as an American citizen, but, sitting here right now, I don't have a position on what I have read in the newspapers about the IRS. I don't see a connection between what I have read in the newspapers and what we are doing.

Mr. JORDAN. You don't see a connection at all?

Mr. COHEN. I don't.

Mr. JORDAN. And you don't think we need to delay the implementation of this, even though the guy in the Senate who was so involved in putting it together, has said it is a huge train wreck? You don't think we need to delay, a suspension, a hold?

Mr. COHEN. Absolutely not.

Mr. JORDAN. Okay.

Mr. CARTWRIGHT. Mr. Chairman, would you yield for a point of information?

Mr. JORDAN. I would be happy to yield to the ranking member.

Mr. CARTWRIGHT. I would just like to point out that what Senator Baucus said was if the Obamacare is not implemented properly, it will be a train wreck.

Mr. Cohen, when the chairman asked you that question, did he put the question in that context?

Mr. COHEN. It was a little different.

Mr. CARTWRIGHT. And, overall, would you agree, if we don't have things like the Navigator Program, that would lead to improper implementation of Obamacare?

Mr. COHEN. You know, I am sure that many people recall that when Medicare Part D went into effect, there were problems in the beginning, there were some significant problems in the beginning; and I think that was a previous administration to this one. And today millions of Americans rely on the benefits that they get from that program.

So I think we ought to look at this like any other big undertaking. Will it be perfect on day one? It may not be perfect on day one. We are working day and night to make it as good as it can be. We are going to be successful. We are going to be ready on October 1st and millions of Americans will benefit from the work that we are doing.

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

Mr. JORDAN. I appreciate that. I just want to, again, for the record, though, the senator used the term train wreck, he didn't use that this was a big concern, this was going to have some prob-

lems, this was going to take some time. He said train wreck. And that was why I had the line of questioning I did.

With that, would yield to the gentlelady from Illinois, Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. Cohen, how are you this morning?

Mr. COHEN. Good. Thank you.

Ms. DUCKWORTH. Great. Health insurance availability and costs are a huge concern for small businesses, and in my district I have a large percentage of small businesses. One of the things that small businesses face is that they have less bargaining power than large companies and they generally pay higher prices for insurance, if they can afford it at all.

I was very disappointed when, earlier this year, CMS decided to delay the requirements to make more poor health plans available for small business workers in the Small Business Health Option Program, the SHOP Program. I have heard a lot of anxiety from small businesses in my district about how the health care law will affect them. This provision has real promise, when it gets implemented, to improving the status quo for small businesses, since most of them are only currently able to offer their employees access to a single health plan that the employer themselves select.

Could you comment on the reason for this delay and how do you expect the delay to effect the attractiveness of the exchanges?

Mr. COHEN. Thank you. We are committed to providing employee choice through the SHOP. We are mindful of the significant undertaking we have ahead of us, and this really was a strictly operational decision that we had to make in terms of what we are able to accomplish for year one, and we reached the conclusion that it was the more prudent thing just to delay it for a year. We are committed to it, we believe it is important, and we will put it into effect, but it was really just a matter of the difficulty we had of getting it into place in time for this October.

Ms. DUCKWORTH. Thank you. We have been discussing the importance of the Navigator Program and how we need to certainly make sure it is implemented in the best way possible for optimum results. With regard to the Navigator Program and other outreach efforts, can you elaborate on the Administration's plans to ensure that the information is accessible and usable by people with disabilities?

Mr. COHEN. Yes. That is one of the factors that will be scored in applying for grants under the Navigator Funding Opportunity Announcement, is both a track record and a plan to reach more difficult-to-reach, more vulnerable communities, in particular the disabled. And then through the application review process and the grant decisions we will definitely be looking to provide grants to organizations that can fill that need.

Ms. DUCKWORTH. Thank you. You know, one of my highest priorities is to ensure that my constituents have access to affordable, quality health care. It is what my constituents have told me over and over again that they want. I am concerned, however, by reports that say that the majority of Americans who are eligible for assistance to help them afford health care are still unaware of how they can benefit from the law. It seems to me that with the October

1st enrollment date quickly approaching, you have a big communications problem on your hand, and you alluded to that.

Could you speak a little bit on the Administration's readiness to reach out to this huge number of people so that they can enroll in time? Basically, you say that you are going to be ready to go on October 1st, and you need to be. If not, what do you need in order to get ready and have a successful rollout of these provisions?

Mr. COHEN. So we have a plan in place that basically is timed so that people are getting the information close to the time in which there is something that they can do with it. So right now we are in what we call the education phase, which began in January and proceeds through June, where we are just putting out information. We are in the process of re-purposing the HealthCare.gov site to be really a consumer information site. Our call center will be going live in June, where people will be able to call and get information that way. And then starting in the summer we will begin what we call the anticipation, or get ready phase. And I am not an expert in these things, but what I understand is that if you start too early and then people say, well, what do I do, and then there is nothing that they can do because it is too soon, then you may end up having people who get a little bit kind of frustrated or disappointed.

So we really are gearing towards making sure the people get the information they need in time for October, when they actually can take action and begin to get enrollment coverage.

Ms. DUCKWORTH. Thank you, Mr. Cohen.

I yield back my time, Mr. Chairman.

Mr. GOSAR. [Presiding.] I thank the gentlelady.

I will yield to the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Medicare ended up costing 12 times more than what was predicted after its first 25 years of operation. The cost of Medicaid exploded even more than that, as Chairman Jordan mentioned in his opening statement. The estimated cost for Obamacare, now the un-Affordable Care Act, are now double or triple what was originally estimated. All other Federal medical programs have gone far beyond what was originally predicted with the low-ball front end estimates. And, of course, Speaker Pelosi was famously quoted as saying we would have to pass Obamacare before we could find out what was in it. But the more we find out, the more complicated, confusing, and convoluted it becomes. And we are told we have to hire 16,500 more agents for the Internal Revenue Service to enforce the law, and possibly thousands of navigators and assisters.

But I want to go in a little different direction, and that is the solicitation of the contributions by the Secretary. The Washington Post story on this says, but the industry official who had knowledge of the cause, but did not participate directly in them, said there was a clear insinuation by the Administration that the insurers should give financially to the nonprofits. Meredith McGehee, policy director for the nonpartisan Campaign Legal Center, which researches government ethics issues, said she was troubled by Sebelius' activities because the Secretary seemed to be "using the power of government to compel giving or insinuate that giving is going to be looked at favorably by the government."

The New York Times story said, but several executives said they were uncomfortable with the discussions because the Federal Government has the power to approve or reject the health plans they want to sell in insurance markets that will be run by Federal officials in more than 30 States. Health care executives said they were reluctant to make big contributions for several reasons, including the fact that insurers are required to pay more than \$100 billion in new taxes over the next 10 years to help defray the cost of expanded coverage. Direct companies must pay new fees totaling \$34 billion over the same period.

As you can see, my main concern, Mr. Cohen, are the costs. But do you know did the Secretary request a legal opinion about the propriety of soliciting donations?

Mr. COHEN. I can't speak to the specifics of what the Secretary, any conversations she had or what she did because I don't know. It sounds like the person quoted in the story doesn't know either, because they say they weren't on the phone, but they just heard about it from somebody else.

What I can tell you, though, is that during Medicare Part D, which was put into place by a previous administration, the Department worked with a wide array of groups, including AARP, PhRMA, the National Alliance for Hispanic Health, the National Association of Area Agencies on Aging to do outreach and to help people get enrolled in coverage in Medicare Part D. That is what they did with Medicare Part D. It is called a public-private partnership, and it can be a very effective way of reaching out into the community and helping people learn about a program and what it can benefit for them. That particular partnership, which was called La Promesa, operated to do one-on-one outreach in 17 different States. So that is what they did with Medicare Part D.

Mr. DUNCAN. All right. Let me ask you something else that Chairman Jordan mentioned. He mentioned the loss of jobs and the fact that many companies are cutting people's hours back so they don't go over the 30 hour limit, and once again The Washington Post had this, said because of this Cook Medical-Boston Scientific extractor corporation, Medtronic, Covidien, and Zimmer Companies have all cited the medical device tax is the reason for building plants in China, Mexico, Ireland, and Costa Rica, and for laying off hundreds of U.S. workers, 1,000 in the case of Stryker. Several of these companies, possibly all, have already planned charges against earnings ranging from \$50 million to \$175 million.

Have you looked into this part of the law?

Mr. COHEN. I am not familiar with what those companies have done or the decisions that they have made, no.

Mr. DUNCAN. All right, before my time runs out, how many different companies and unions and businesses and governments have requested waivers from the law and how many have been granted?

Mr. COHEN. I would have to get you that information; I don't know it off the top of my head. The only waiver program that we had was a waiver from the annual limits provision to allow companies that offered coverage to their employees, to keep that coverage until January 1 of 2014. But I couldn't give you the number. But it is on our website, I know that.

Mr. DUNCAN. Okay, thank you very much. My time is up.

Mr. JORDAN. [Presiding.] I thank the gentleman from Tennessee and now recognize the gentleman from Nevada, Mr. Horsford.

Mr. HORSFORD. Thank you, Mr. Chairman.

Thank you for being here, Mr. Cohen. I am from Nevada and we actually have a governor, who happens to be a Republican, who is working to implement this bill, so I am going to focus on what we can do and what we can't in my questioning.

As you know, Nevada has been working hard to set up our exchange and to develop training and certification requirements for the Navigator Program. We are already in the process of training navigators; however, it is my understanding that States are still waiting for CMS to finalize its proposed rule on standards for navigators and the non-navigator assistance personnel.

Can you give us an idea of when we can expect a final rule on that so that the States who are working to implement this bill can continue to do so on time and on track?

Mr. COHEN. I know that we are working through the comments that we received to the proposed rule, and while I can't give you a specific date, I expect that the final rule will come out very soon.

Mr. HORSFORD. Also, my particular district in Nevada is sparse, it represents both rural and urban interests, and it takes over six hours to drive from one corner of my district to the other, so one of my concerns is the implementation in ensuring that all constituents are able to access information, even the struggle that we have around online. I have communities that literally have very little broadband connectivity. So what is being done to ensure that ACA implementation information is being disseminated to rural communities in particular?

Mr. COHEN. I think it is a really good question, and obviously there are parts of the Country where broadband access is an issue and where it is not going to be practical for someone to come door-to-door, given the distances involved and the population density. I think for those people it is probably going to have to end up being a paper application, and they will probably have to get the help that they need through the call center, which will be operational beginning in June, 24 hours a day, 7 days a week, and will be there to provide people with assistance over the phone who don't have access to online help.

Mr. HORSFORD. And is that an 800 number?

Mr. COHEN. You know, I actually don't know what their phone number is. It is being launched in June and the information will be out.

Mr. HORSFORD. And what type of personnel will be trained to deal with different languages?

Mr. COHEN. There will be access to translation services, and don't hold me to the exact number, but it is going to be a large number of languages through a translation service that will be available.

Mr. HORSFORD. I want to follow up on something my colleague, the gentlelady from New Mexico, talked about, the fact that health insurance is complicated to begin with, it doesn't matter what type of program, if you are a private payer or not. But one of the areas that the navigators are supposed to respond to is specifically the uninsured individuals who may have never been in an insurance

program and are unfamiliar with coverage options. How will navigators respond to this population of uninsured specifically?

Mr. COHEN. So that is a great question, and part of the training and then what the navigators will be doing is to provide very basic information on how health insurance works; what benefits are, what is covered, what is not covered; what deductibles are; what cost-sharing is, co-insurance, co-pays. And then, as you know, once you get to the point where you are choosing what plan to buy, the Affordable Care Act requires a couple things that do make it a little bit easier: one, all plans have to have essential health benefits so that there is a continuity across plans as far as what is covered; and then, secondly, we have these metal levels, so you have the bronze, silver, gold, platinum, and the navigator can help walk through with the person what are your medical costs typically in a year? If you have high medical costs, you might want to pay a little bit more in premium, but get less of a deductible. If you have not a lot of medical costs in a typical year for your family, you might want to go with the bronze plan, which will be less expensive, but the deductible will be higher before coverage actually kicks in.

And that is the kind of information the navigators will be trained in to be able to help their neighbors in understanding this transaction.

Mr. HORSFORD. I am out of time. I do have some additional questions I would submit for additional responsible. I just hope that we will work in this Oversight Committee to figure out ways to implement this bill and to help States like Nevada, who actually want to do it right. Thank you.

Mr. GOSAR. [Presiding.] I thank the gentleman from Nevada.

I now yield the floor to the gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Thank you, Dr. Gosar.

Thank you, Mr. Cohen, for being here today. I was listening to your conversation a bit earlier with Mr. Cartwright about how the more people you get into a health care pool, the cheaper it makes it for everyone. Is that your understanding or your belief?

Mr. COHEN. Well, it is the mix as well as the number, right? So generally we expect that folks who have a lot of health care costs will find their way to us and will get enrolled in coverage.

Mr. DESJARLAIS. Okay, that is a good point.

Mr. COHEN. We really want to reach out to the young and the healthy folks who may not appreciate the need for health insurance, and yet if, unfortunately, something were to happen to them and they were to get sick or be in an accident, they would need it.

Mr. DESJARLAIS. Okay, so people who have preexisting conditions or health problems, they have a hard time getting insurance now why?

Mr. COHEN. Because, if they are covered by their employer, they are okay; but if they are not covered by their employer and they are out in the individual market—

Mr. DESJARLAIS. It is very expensive, right?

Mr. COHEN.—a health insurer may decline to write them at all or it will be very expensive.

Mr. DESJARLAIS. So the insurance companies cherry-pick in order to be profitable; they keep these people out. And what is frightening to me is who decides what a preexisting condition is. It is really the people who are trying to make the money, the insurance companies. We think of preexisting conditions as cancer, maybe previous heart disease, but it actually can be defined as anything from acne to hemorrhoids. And anyone in here either has or is going to have a preexisting condition, so it is going to get more expensive. And the whole problem with our health care system is that it is too expensive right now and it is unaffordable for too many people. So to have this discussion that bringing a bunch of people in, especially the most expensive people, is going to somehow make it cheaper for everyone is just simply false. I have been in health care for over 20 years and I can tell you that is not going to be the case.

But there are a couple things I want to talk about. Do you think that the statutory authority that you described here to create the navigator/assisters is ambiguous or is it pretty clear, the statutory authority?

Mr. COHEN. You know, I am not the lawyer, but we are confident and believe that we have the statutory authority to do the program that we propose.

Mr. DESJARLAIS. Okay, the Health and Human Services created the Assisters Program solely through the rule-making process, and HHS officials admitted to the committee staff that there is no statutory authority for the Assisters Program. Are you discounting what HHS said to the committee?

Mr. COHEN. Well, I wasn't there, so I can't tell you what they said or they didn't say. What I am telling you in my testimony is that we have authority for that.

Mr. DESJARLAIS. So you don't know whether they misled the committee or not.

Mr. COHEN. Well, I am sure that they didn't mean to mislead the committee.

Mr. DESJARLAIS. Well, they said they didn't have statutory authority and you are saying you do, and I am asking you if it is clear or ambiguous. Can you answer whether it is clear or ambiguous?

Mr. COHEN. No. I just don't feel comfortable characterizing it one way or the other.

Mr. DESJARLAIS. So basically, every time we run into a hitch, rather than go through Congress, we just circumvent Congress and we just make the rules to make it fit, we try to put a round peg in a square hole. And that is what has been going on with this bill because it was poorly written. We heard the other side testify that this is the law of the land. Well, sometimes bad laws are written, and this is a case of a bad law. And to think that it is going to be ready to implement by October is just ridiculous, considering the involvement of the IRS, and the fact that we are having to create assisters to be funded in a different fashion than what navigators are shows that there is a real flaw here, too, as well.

I wanted to get to one more point. The proposed rule requires navigators to recruit, support, and promote a staff that is representative of the demographic characteristics of communities in

their service area. However, HHS has yet to reveal how they plan to enforce this provision.

Okay, so my question is the proposed rule requires navigators and assisters staff to be representative of the demographic characteristic of communities in their service area. What are the specific demographic characteristics that HHS is referring to?

Mr. COHEN. I don't know what we have defined then any more specifically than that, but I think the goal is—navigators are going to help whoever comes to them, regardless of what their demographic characteristics are. But we want the navigators to reflect the community in which they will be working. That is the purpose.

Mr. DESJARLAIS. Okay.

I have no further questions.

Mr. GOSAR. I thank the gentleman from Tennessee.

The gentlelady from Illinois is recognized.

Ms. KELLY. Thank you, Mr. Speaker.

Thank you, Mr. Cohen, for being here. The majority has suggested that the Navigator Program is somehow unprecedented and has suggested a parade of horrors that will result from community organizations and nonprofits providing consumers with information so they can get enrolled in affordable, high-quality health insurance plans. I wanted to ask you what types of organizations can apply for Navigator grants under the Funding Opportunity Announcement that CMS has released?

Mr. COHEN. A broad variety of different types of organizations can apply: faith-based organizations, Native American tribes, chambers of commerce, community nonprofits.

Ms. KELLY. So really the whole gamut?

Mr. COHEN. Really, the whole gamut that reflects the great diversity and public activity of America.

Ms. KELLY. Does the Navigator Funding Opportunity Announcement look at the organization's ties to the community and history in the community in which it operates as important factors in the review criteria?

Mr. COHEN. It absolutely does, yes.

Ms. KELLY. And doesn't CMS have prior experience with exactly this type of program?

Mr. COHEN. We do. We have been involved with similar programs for Medicare for Part D, for Medicaid, and for CHIP.

Ms. KELLY. Okay. Because I was going to say isn't it true that the community-based application assisters under the State Children Health Insurance Program back in the late 1990s.

Mr. COHEN. Exactly so.

Ms. KELLY. How successful would you say these organizations are in getting children enrolled in the State Children Health Insurance Program?

Mr. COHEN. I think they have been very successful.

Ms. KELLY. Thank you. It seems like CMS is on sound footing and relying on its experience in establishing this grant program. We need to do everything we can to ensure that consumers are made aware of all their health insurance options and that they choose a plan that is right for their family. The Navigator Program is an important component, in my opinion, of this process. Thank you.

Mr. COHEN. Thank you.

Mr. CONNOLLY. Would the gentlelady yield?

Mr. GOSAR. Yes. She yields.

Mr. CONNOLLY. I thank my colleague.

Mr. Cohen, is there a confirmed head of CMS? You are the deputy administrator and director.

Mr. COHEN. I believe Ms. Tavenner was confirmed last week to be the administrator of CMS, yes.

Mr. CONNOLLY. And have you been showered with appropriations to implement the Affordable Care Act?

Mr. COHEN. We have not.

Mr. CONNOLLY. In fact, is it not true that the majority has refused to provide your department with any funds for implementation?

Mr. COHEN. Yes. I mean, we have the funds that were provided under the bill when it was enacted.

Mr. CONNOLLY. Originally.

Mr. COHEN. Originally. But that has been the extent.

Mr. CONNOLLY. We have a new majority in this Congress.

Mr. COHEN. Yes.

Mr. CONNOLLY. And is it not also true that the majority here in the House has voted, just last week, for the 37th time, to try to repeal, in whole or in part, the Affordable Care Act?

Mr. COHEN. That is my understanding, yes.

Mr. CONNOLLY. Well, so you have \$54 million left over in grants for the Navigator Program to try to implement the exchanges, is that correct?

Mr. COHEN. That is what we have put out in this grant application, yes.

Mr. CONNOLLY. Do you know what the Yiddish word chutzpah means, Mr. Cohen?

Mr. COHEN. I do.

Mr. CONNOLLY. Might one just observing not want to apply that word to the alleged concern being expressed here today by some who have made it their lifelong effort to repeal Obamacare and to make sure that you don't have a dime to implement it, to suddenly show great concern as to whether it will be implemented well? Might that fit the Yiddish definition of chutzpah, Mr. Cohen?

Mr. COHEN. I think I will leave that to you, congressman.

Mr. CONNOLLY. Well, growing up, I was known as the Little Rabbi; I worked in a restaurant called The Pumpnickel, so I take credit for understanding what chutzpah means. And if it means anything, it certainly has application to this hearing. It is a bit much to have people lecture you about how well or poorly it is going to be implemented who have spent every waking hour trying to make sure you can't implement a law that they could not defeat fair and square on the floor of the House in 2009.

Mr. COHEN. I will say we can use all the help we can get from anyone who is interested in seeing us do the job well.

Mr. CONNOLLY. Thank you.

And I thank my colleague for yielding.

Mr. GOSAR. The gentlelady yields back.

Just to make a comment here, we are comparing apples and oranges. When we are talking about CMS and S-CHIP, it is the same

plan that you are providing across the board. This is not the same plan. These will have different deductibles. It is much more authoritative and interpretive in regards to those benefits. So it isn't the same program.

I yield to the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. Well, thank you. And I certainly would point out to my colleague that we did succeed in passing a repeal of Obamacare out of the House. The gentleman says in 2009 we lost the vote, but we have won multiple—he referenced 37, so we have won those 37 votes. It would be great if we had some folks on the other side of the Senate comply with that and actually do what is reasonable and right, and address these concerns.

The reason why we are trying to address concerns with you, sir, is that we have deep concerns about this program and what is happening. My colleague, Mr. Duncan, referenced a press report about Secretary Sebelius making multiple phone calls to solicit fund-raising from—and you can flip to your notes on this, and I would certainly appreciate your answer on it—but soliciting funds from health insurance folks, pharmaceutical executives, hospitals, to donate large sums to Enroll America to fund the implementation of Obamacare, the outreach effort. Are you aware of this?

Mr. COHEN. No, I don't know what the Secretary did or didn't do, so I can't comment on it.

Mr. MCHENRY. Are you aware that the Secretary made these calls?

Mr. COHEN. No.

Mr. MCHENRY. Is this the first time you have heard this being brought up?

Mr. COHEN. I have seen it in the media.

Mr. MCHENRY. Oh. Let me give you an opportunity to restate this. Have you heard or read about Secretary Sebelius making fund-raising calls for Enroll America?

Mr. COHEN. I have read some stories about Secretary Sebelius and Enroll America, yes.

Mr. MCHENRY. Okay.

Mr. COHEN. But I don't know what she did or didn't know because I am not privy to what she did or didn't do, so I can't comment on it.

Mr. MCHENRY. Okay. I just wanted to make sure we had it correct on the record, and you can correct the record that you have heard about it, because we certainly have and my constituents have. I have gotten a lot of questions about it.

But are you aware if the Secretary or any HHS staff has official legal opinion on the propriety of this, soliciting donations?

Mr. COHEN. I don't know.

Mr. MCHENRY. You don't know? Okay.

So are you going to take specific steps to ensure that there is not one favoring of a business that gave to this effort or this organization, Enroll America, that that group isn't favored over one that said no to the Secretary?

Mr. COHEN. Well, I am not aware that anyone was asked, gave, said yes, said no. I don't know any of those things, so I am not in a position to favor anybody or not favor anybody because I am not aware that any of that happened. What I can tell you, as I men-

tioned before, is that public-private partnerships to help promote a new program, such as was done in Medicare Part D, where AARP and PhRMA were involved with CMS in efforts to help get information out about a prescription drug program that presumably the members of PhRMA stood to gain by, that is something that has been done in the past. I think public-private partnerships can be a very effective way.

Mr. MCHENRY. Have you done any of that?

Mr. COHEN. I have not.

Mr. MCHENRY. You have not undertaken that. Okay. So there is legal authority to do that?

Mr. COHEN. I haven't asked for any legal authority. I haven't done it, so I don't know the answer to your question.

Mr. MCHENRY. Okay. And you are not aware of any persons or individuals who are participating in this effort?

Mr. COHEN. I am not.

Mr. MCHENRY. You are not. Okay. So you don't know how closely HHS is working with Enroll America on this advertising effort?

Mr. COHEN. I don't.

Mr. MCHENRY. Okay. So you had no input on this Enroll America process?

Mr. COHEN. I have no input with respect to Enroll America at all.

Mr. MCHENRY. Okay. Okay. Now, this is interesting. In The New York Times it said a number of executives felt a bit uncomfortable with these calls. And the reason why we ask, Mr. Cohen, is because many of us did not ask questions of the IRS, and we found disclosures now about what happened in that whole process with IRS undertaking targeting of certain political groups. So we just want to confirm that that is in fact the case, and that is why I ask these series of questions.

Mr. COHEN. Understood.

Mr. MCHENRY. And if you want to correct the record for anything, I have 20 additional seconds, if I have not given you ample time.

Mr. COHEN. Nope.

Mr. MCHENRY. Okay. Well, I certainly appreciate that, and I just call the folks attention. The press reports say the Secretary was making these fund-raising calls. We hope that, at the end of the day, the groups that said no will not be targeted for retribution by either Secretary Sebelius or the Health and Human Services Department or the folks that are implementing Obamacare. This is a deep concern Americans have about their privacy and what their government can do to them if they say no or try to act counter to the wishes of those in powerful positions.

With that, I yield back.

Mr. GOSAR. I thank the gentleman for yielding and I acknowledge the gentlewoman from California, Ms. Speier.

Ms. SPEIER. Thank you, Mr. Chairman.

Mr. Cohen, it is great to see you.

Mr. COHEN. It is great to see you too.

Ms. SPEIER. Unlike most of the members here on the panel, I have worked with you before. I know what a great talent you are,

how you served California very well in the Department of Insurance, so we are very lucky that you are with us. Thank you.

Mr. COHEN. Thank you.

Ms. SPEIER. Is it true that the Affordable Care Act passed the Congress?

Mr. COHEN. Yes.

Ms. SPEIER. Is it also true that President Obama was re-elected?

Mr. COHEN. He was.

Ms. SPEIER. So isn't it our obligation to then implement that law?

Mr. COHEN. It is, and we are doing that every single day.

Ms. SPEIER. All right. So what keeps you up at night in terms of your ability to implement that law?

Mr. COHEN. We would like to have more funding. That would be helpful. And we would like to have less distraction.

Ms. SPEIER. All right, let's talk about one of the concerns that my Republican colleagues have about the grantees that serve as navigators or non-navigator assisters. My understanding is, and based on your written testimony, that qualified, unbiased, expert contractors will review all applications using an evaluation rubric developed by HHS which will be scored and statistically ranked. Will you explain that process and some of the factors that have gone into that consideration?

Mr. COHEN. I would be happy to. So this is a process that we undertake in connection with our Office of Acquisitions and Grant Management at CMS; it is a longstanding process, it is not new to this particular grant. And they work with us to make sure that we put out a Funding Opportunity Announcing that is clear and complies with the law, and that people can submit applications for. Then they help us, through a contractor, select review panels that are people who know about the area that we are involved with, who don't work for HHS or CMS, and then they score the applications based on very specific criteria that are set forth in the announcement that include what type of organization it is, its ties to the community, its previous accomplishments, the expertise of its personnel, just how good an application and budget they have submitted, all those things; and they score it on a 1 to 100 scale so we get this objective view of the strength of each applicant. And then they do a summary for us that basically says here are the strengths, here are the weaknesses, as we move forward to make the selections.

Ms. SPEIER. So this is very similar to the selection process used for other grantees in HHS.

Mr. COHEN. Exactly.

Ms. SPEIER. All right. So nothing different, nothing that is going to show bias; very objective, correct?

Mr. COHEN. Correct.

Ms. SPEIER. All right, let's go on and talk about training. As I understand it, there are some training standards that will require up to 30 hours of training in 15 different categories of health care topics. Furthermore, as you explained in your written statements, navigator grant awardees would have to pass an exam prior to beginning to help consumers.

Based on all of this, I get the impression that the training requirements in this actually exceed the training requirements that

States require for licensing of health insurance agents and brokers, is that true?

Mr. COHEN. I think they are at least as much as what most States require. They are more than some States require. In some States there isn't any pre-licensing education that is required; you have to pass a test, but you don't actually have to take a course. So, yes, I think that this training compares very favorably to what States require for agents licensing.

Ms. SPEIER. And the funding to provide this training you have?

Mr. COHEN. Yes.

Ms. SPEIER. All right. Would you tell us a little bit more about the program that has been developed in HHS that will ensure that we will have skilled individuals who will be assisting consumers? Give us some idea of what the training components will include.

Mr. COHEN. So the training components will range from just sort of very basic health insurance knowledge and knowledge of the health insurance market; to benefits and what is covered by health insurance policies, and specifically the essential health benefits that are required to be covered by the Affordable Care Act; to cost-sharing, deductible, co-insurance, co-pay, and how that relates to the premiums that people will have to pay and the different metal tiers that plans have under the Affordable Care Act. It is also going to require training in public programs, because some of the people who come to navigators will be eligible for Medicaid or CHIP, and they will have to have an understanding of how that works as well based on adjusted gross income. And then it will also include training in the entire process of helping someone through an application through to the shopping experience and choosing a plan.

But it is very important to note that they will not be making recommendations, they will not be telling people this is the plan I think is best for you; it is purely objective information that they will be providing.

Ms. SPEIER. Thank you.

Mr. GOSAR. I thank the gentlelady for yielding back.

Mr. Cohen, can you make those training modules accessible to the committee?

Mr. COHEN. You know, we are working on them right now.

Mr. GOSAR. So they don't exist. So this is theory right now.

Mr. COHEN. We are working on them right now, and we would be happy to get them to you.

Mr. GOSAR. And do you have a date in mind? You know, we talk about that we are going to be on time here. Can you tell me when you expect to have them done and when we can actually have them in possession by the committee?

Mr. COHEN. Well, as was noted earlier, the grants go out in August, and that is when the training will begin. So the training will be complete and ready prior to that. I can't give you a specific date, but we are happy to work with you to get you whatever information.

Mr. GOSAR. We would like to have a constant dialogue, so we would like to have those modules.

Mr. COHEN. Absolutely.

I would like to recognize the gentleman from Michigan, Mr. Bentivolio.

Mr. BENTIVOLIO. Thank you, Mr. Chairman.

Boy, have I got a lot of questions. Thank you, Mr. Cohen, for coming in today and testifying.

Mr. COHEN. Sure.

Mr. BENTIVOLIO. You had talked earlier, and I am a bit confused. Maybe you can straighten me out here. You said that the assisters don't obtain confidential privacy information from those who are applying, correct?

Mr. COHEN. They don't retain any. The information is put by the person who is filling out the application, either on paper or online, but the person who is helping them doesn't keep that information, because it just goes directly from the person who is applying through the system and the navigators will be instructed they are not to retain any personal information belonging to the people they are helping.

Mr. BENTIVOLIO. With that said, even though California has a law that says that assisters have to have a background check?

Mr. COHEN. Yes.

Mr. BENTIVOLIO. And you also said that if somebody does misuse that privacy information, there is a \$25,000 fine?

Mr. COHEN. Correct.

Mr. BENTIVOLIO. And who investigates and enforces the assisters, the IRS?

Mr. COHEN. No. It is our grant, so CMS will be doing the oversight with respect to the federally-facilitated marketplaces, and then the States will be doing it with respect to the State marketplaces.

Mr. BENTIVOLIO. So even though it goes on a computer or on paper, the assisters aren't supposed to retain it.

Mr. COHEN. That is right.

Mr. BENTIVOLIO. But I am a little concerned when you—maybe I misunderstood, and you could clarify to me the qualifications to be an assister. When he asked you have to have a high school education, you didn't really answer that question. I mean, what are the requirements for being an assister; social worker, prior experience selling insurance?

Mr. COHEN. Well, in the navigator grant process, you have to demonstrate both a track record and expertise of the people who are going to be performing this function. So whether someone could qualify who wasn't a high school graduate, I can't say. I don't believe that that is going to be the norm, no.

Mr. BENTIVOLIO. Okay. And you said how many hours of training in modules?

Mr. COHEN. Twenty to 30 hours.

Mr. BENTIVOLIO. Twenty to 30 hours. I think that is the amount of time you need to study HIPPA, if I remember what my wife told me. She has been a nurse for 33 years.

Mr. COHEN. Okay.

Mr. BENTIVOLIO. So 20 to 30 hours?

Mr. COHEN. Yes.

Mr. BENTIVOLIO. How tall are you?

Mr. COHEN. How tall am I? I am about 5'6.

Mr. BENTIVOLIO. Five foot six. Okay. I am 5'11, just short of 6'. Do you know how many pages are in the new regulations for the un-Affordable Health Care Act?

Mr. COHEN. I don't.

Mr. BENTIVOLIO. Okay. It is 20,000. Can we get that up?

Mr. COHEN. There it is.

Mr. BENTIVOLIO. There it is. Seven foot tall. And you expect an assister who is going to assist people on this un-Affordable Health Care Act to understand 20,000 pages of new regulations?

Mr. COHEN. No, I don't. They are not going to have to read all those regulations, and neither does an insurance agent have to read every—

Mr. BENTIVOLIO. Somebody does. And they have to digest that information to put it in these modules. Twenty thousand pages.

Mr. COHEN. They will have the information that they need to help people understand the benefits of the law and get enrolled in coverage. That is what they need to do. They don't need to understand every aspect of what it takes to implement the Affordable Care Act. They will have the information that they need.

Mr. BENTIVOLIO. In reference to Congressman Connolly's definition of chutzpah, if I remember right, I wasn't a member of Congress at the time, but I remember my definition of chutzpah is saying something like you have to pass the bill before you can read it. In fact, truth in labeling, we would have said you have to pass it before you even write it, or something along those lines. Now, that takes a lot of chutzpah. And calling it a constitutional right, when in fact the Supreme Court said it was a tax, right? Didn't the Supreme Court the un-Affordable Health Care Act is a tax?

Mr. COHEN. I believe the Supreme Court upheld the individual responsibility penalty as a tax.

Mr. BENTIVOLIO. Yes. It kind of reminds me of walking into a department store, not buying anything, and meeting the IRS agent outside and he says, hey, you have to pay a tax for not buying anything. You are taxed on failing to engage in commerce or buying any type of insurance under this program, correct?

Mr. COHEN. People who are required to have health insurance under the law may be penalized if they don't have insurance under the law.

Mr. BENTIVOLIO. So they are going to be taxed for failing to engage in commerce, correct? Yes or no? I am running out of time.

Mr. COHEN. I can't argue with you what Chief Justice Roberts decided in the case; he decided what he did.

Mr. BENTIVOLIO. It takes a lot of chutzpah to do that to the American people.

I could use more time, but I yield back.

Mr. GOSAR. I thank the gentleman.

I would like to recognize the gentleman from Georgia, Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman.

Thank you, Mr. Cohen, for being here today. I am relatively new in Congress and I was not here when we voted on the bill and I did not read it. Your testimony titled Navigators and Assisters Programs, the copy that I have talks a lot about the Navigators Program but does not talk a lot about the Assisters Program. We have

talked about the requirements for participating in the Navigator Program, how those grants go out the door. Where will I look to find the answers to what those regulations and requirements are for participating in the Assisters Program?

Mr. COHEN. So we will be coming out with a final rule. Right now the Assisters Program is in a proposed rule, and we are reviewing comments and will be coming out with a final rule soon.

Mr. WOODALL. I may have asked the wrong question, Mr. Cohen, and, again, forgive me if I have. I was looking at the stack that Mr. Bentivolio put up there on the wall. I know there is a lot of reg that has to come out and, after I vote yes or no, I sometimes lose control over that and it goes down to the agency. I am actually thinking about the bill itself. Even the legislative language of the bill is explicit about how to participate. It is in this whole consumer choice section, it is all about protection, all about making sure we get the best people involved and making sure consumers have the best information they can. I see the Navigator side.

Mr. COHEN. Right.

Mr. WOODALL. I just don't see the Assister side.

Mr. COHEN. Well, what we propose in the rule that we put out was that States have come to us that are running their own exchanges, and what they have said is that—

Mr. WOODALL. Again, I might not be asking the right question. I am not interested in what you all are doing in your regulatory work.

Mr. COHEN. Okay.

Mr. WOODALL. Because I think all of your regulatory work is simply responding to what we passed in the Affordable Care Act.

Mr. COHEN. Right.

Mr. WOODALL. So in the Affordable Care Act I see all about how to participate in the Navigators Program; it defines it, tells me about it, tries to make it very robust.

Mr. COHEN. Right.

Mr. WOODALL. I don't see anything about the Assisters Program.

Mr. COHEN. It says that exchanges have to provide outreach, education, and consumer assistance, and that is what the Assisters Program is going to implement, that provision.

Mr. WOODALL. It says that States have to provide that?

Mr. COHEN. If they are operating their own marketplace, yes.

Mr. WOODALL. And that the Feds will fund the provision of those services?

Mr. COHEN. That funds are available under Section 1311 while States are establishing their exchanges, yes.

Mr. WOODALL. So what do you make of the funds under 1311? Because, again, language is very explicit here: navigators will do this, navigators will do that, States will provide these services. And it says very clearly grants under this subsection shall be made from the operational funds of the exchange, and not Federal funds received by the State to establish the exchange. I read that as an explicit we don't want Federal funds used for this purpose. If you choose to participate in an exchange, you will be responsible for these costs. But you are going through an entire rule-making process, great machinations in order to make sure folks do receive Federal funds for this. Do you read this provision differently than I do?

Mr. COHEN. I agree with you that the statute says that Federal funds under 1311 are not available to States to do their Navigator Programs, and what we said is but States still have this obligation to provide consumer assistance, and during the first year, before they are financially self-sustaining, they may use 1311 money to perform that function.

Mr. WOODALL. Let me make sure I—

Mr. COHEN. But not to run their Navigator Program. They still have to have a Navigator Program, but they may use that funding to perform their statutory obligation under the law to do consumer assistance, to do consumer outreach as part of establishing the exchange before it is financially self-sustaining.

Mr. WOODALL. That doesn't pass the smell test for me. You know, when is a cut not a cut? Only in Washington, right? You increase it by \$2 and we call that a cut. Folks don't understand the Washington math. I don't think they understand the Washington rhetoric. I wish we were all in this together to try to make provisions better.

Can I ask how many times have you gone to the committee of jurisdiction to say, you know what, you explicitly say we can't do this, but we think we need to do this, and can you change the law to give us that authority?

Mr. COHEN. And I actually don't know the answer to that question.

Mr. WOODALL. Do you believe that it has happened, though?

Mr. COHEN. I don't know.

Mr. WOODALL. You don't have any idea?

Mr. COHEN. I don't.

Mr. WOODALL. Mr. Chairman, that is the crisis of confidence I think we perpetuate on the American people. Here is something that explicitly says thou shalt not. I wasn't here to vote on it, but my colleagues did, the Senate did; the President signed it. For whatever reason, we said thou shalt not. And when you decided you didn't like it, you just decided you would go a different way to do the exact same thing, the exact same way, but call it something different, and get another pot of money. Not even knowing if you ever came to Congress to say we think this could be done better, will you give us that authority. Folks say that the Administration and Congress can't work together; hard to work together when we don't even get the invitation and the first thing we see is the rule-making that seems to be directly contradictory to statutory authority, and I deeply regret that both for us and for the American people.

I yield back, Mr. Chairman.

Mr. GOSAR. I thank the gentleman of Georgia.

The gentleman from Georgia, Mr. Collins, is now recognized.

Mr. COLLINS. Thank you, Mr. Chairman. We will just continue the Georgia pattern here for just a moment. I want to have a dialogue and I have a lot of questions here that I think can be answered sort of yes, no, or just say you will provide. I am leaving it open at this point.

One of the questions that always comes up here, especially in these oversight hearings, is the issue of oversight, and it is one of those things that, after something happens, well, if we had had

better oversight, we would have caught it. I understand explicitly the States are supposed to provide for their own oversight in dealing with their program; however, States such as our own, Congressman Woodall and myself, have chosen not to participate in this. So the Federal program will have to do. Do you have a program set up for oversight and management that would oversee this if it falls back on you to instruct this?

Mr. COHEN. And you are speaking about the Navigator Program?

Mr. COLLINS. Yes.

Mr. COHEN. Yes, we absolutely do. It is consistent with the way we manage grants.

Mr. COLLINS. I apologize, sir. Do you have these written down? Are these policies written down? Is this oversight plan written down?

Mr. COHEN. I am hesitating because I am not certain whether there is a specific oversight plan for this program written down. There are rules that we follow in terms of how we do oversight when we do grants administration that are not unique to this program.

Mr. COLLINS. But as far as this program, especially in light of what this program is going to entail, it seems to me that there should be, because you are requiring the States to have a written oversight program for this, and an oversight plan.

Mr. COHEN. I will have to look.

Mr. COLLINS. Okay, so at this point we don't have one.

Mr. COHEN. I will have to look; I am not certain.

Mr. COLLINS. If you do, will you provide it to this committee?

Mr. COHEN. I will look and we will certainly work with you, yes.

Mr. COLLINS. Also, you said on awarding—and I am going simply by your statement that you provided for this committee. It said you were using an evaluation rubric developed by HHS for the qualified unbiased expert contractors who will review all the applications. Do you have that rubric?

Mr. COHEN. I am sure we do.

Mr. COLLINS. Okay, I am trying to be calm here. You are sure we do?

Mr. COHEN. I am sure we do, yes. Yes.

Mr. COLLINS. And can you provide it?

Mr. COHEN. We will work with you to get that for you, sure.

Mr. COLLINS. Okay.

Mr. COHEN. And let me, as long as you are on that subject, if I might, because I made a statement earlier that I am informed is not correct, so I want to make sure I correct it. I was talking about the grant review panels and I said that people from HHS and CMS won't be on them, and that is not right; there could be people from HHS and CMS who could be on them. There won't be anyone on them who is involved in the program that is running the Navigator Program.

Mr. COLLINS. Okay. All right.

Mr. COHEN. So I just wanted to correct that.

Mr. COLLINS. Same page you discuss that these folks will all comply with different standards. In your statement you said comply with privacy and security standards, among other activities. Do

you have written down what these privacy and security standards are? Are they written down anywhere?

Mr. COHEN. The privacy and security standards are in our proposed rule, I think, yes.

Mr. COLLINS. Okay. Can you provide those for the committee?

Mr. COHEN. Yes.

Mr. COLLINS. Thank you. Can you ensure us that the navigators and assisters who will have access to extremely personal and sensitive information will be held to the same hiring standards of U.S. Census employees?

Mr. COHEN. I hesitate there because I am not responsible for the census, so I don't know what they are required to do. I know that they will be subject to the standards that CMS employs with respect to all the grants that it does, there is nothing different here.

Mr. COLLINS. Thank you. Will you commit to requiring background checks equivalent to those that the U.S. Census uses before the rule is finalized?

Mr. COHEN. In the proposed rule we have not required background checks, and I can't say what is going to happen in the final rule, but we have given flexibility to States, and some States have decided that they are going to require them, yes.

Mr. COLLINS. And not to be argumentative here, I am not trying to be. This is so important for people right now because this is absolutely changing what we do, and I believe in a very bad way. But in a security situation here I would encourage you, if that is not being given a lot of thought, as far as security background checks, you are dealing with people's lives here, and I would believe that that would be an important aspect.

Moving on. Are you aware of the secrecy law passed by the State of California to conceal spending on government contractors setting up the California exchanges?

Mr. COHEN. I am not, actually.

Mr. COLLINS. From April 2012 to July 2012, did you serve as chief counsel to the California Health Exchange Board?

Mr. COHEN. I did.

Mr. COLLINS. Okay. Two weeks ago it was revealed that the State of California passed a law allowing State exchanges to conceal spending on the contractors that will perform most of its functions, potentially shielding the public from seeing how hundreds of millions of dollars are spent. These contracts will be funded largely by taxpayer dollars. Do you believe taxpayers have the right to know how Federal taxpayer dollars are being spent to implement State-based exchanges?

Mr. COHEN. Well, I know that we review the budgets and the expenditures of all the State-based exchanges, including California's, so whatever law California passes is not going to affect our ability to do oversight over their activities.

Mr. COLLINS. Okay, but at this point I think the question here is should taxpayers have the right to know which companies receive these contracts and how much, and how are you going to balance that if you have set the State exchange up to do it their own way, then you are going to say now that you are going to override California law?

Mr. COHEN. No. Under the terms of the grant, we have the right to look at what they are spending, and we are looking at—

Mr. COLLINS. Which will be public record?

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

Mr. COLLINS. Okay. So the concern comes here is it secret. And my time has expired, but these are the kinds of questions, just providing transparency if we are heading down this road. But that is a concern, because if we are going into this and we don't have those answers, that was just the reason for these questions. I appreciate your time.

Mr. Chairman, I yield back.

Mr. GOSAR. I thank the gentleman.

What we are going to do, Mr. Cohen, is I am going to acknowledge the gentelady from California, then myself to close off the meeting. Thank you.

The gentelady from California, Ms. Speier.

Ms. SPEIER. Thank you, Mr. Cohen.

And, Mr. Chairman, thank you.

Do you feel like you are being sabotaged?

Mr. COHEN. Well, I prefer not to use that word.

Ms. SPEIER. I think you are being sabotaged. And I think it is un-American at this point in time, when this law has passed, we are in the process of implementing it, that you don't have the resources to do the job. You are going to be doomed if you don't get the resources you need.

We just spent over \$1 billion in the Air Force on a computer system that didn't work and we had to trash. A billion dollars. And you have \$54 million to do your outreach? How much do you need to do your outreach?

Mr. COHEN. I don't have a number in my head, but we certainly could use additional funding to be able to do additional outreach and to perform all of the things that we need to do under the law, definitely.

Ms. SPEIER. All right, so I think what the committee should benefit from is having an estimate from you of what you really need in order to do the job and do it well. I mean, there is a lot of stirring up the pot today about how this is going to fail. Well, we can guarantee that it will fail if we don't give you the resources to actually roll it out properly. So tell us what you need. If we can spend \$1 billion on a failed system for the Air Force computers, we can certainly spend enough money so that every American has the information they need to access the health care and the health insurance that they are now qualified to receive.

Mr. COHEN. I do know that in the President's budget he has requested about \$1.5 billion for implementation of the exchanges.

Ms. SPEIER. And that includes the outreach?

Mr. COHEN. Yes.

Ms. SPEIER. \$1.5 billion.

Mr. COHEN. That is in the 2014 budget.

Ms. SPEIER. So maybe that money we spent on that failed computer system could have been better spent here.

I yield back.

Mr. GOSAR. I thank the gentelady.

Mr. Cohen, how closely is HHS working with IRS on Obamacare implementation?

Mr. COHEN. We are working closely with IRS on those aspects of implementation where we have to work together, so, for example, as you know, in determining whether a person is eligible for Medicaid or CHIP on the one hand, or tax credits in the marketplaces on the other, income is a test, and we are working with IRS on verifying people's income when they apply.

Mr. GOSAR. So the IRS is going to be gathering and sending this enormous amount of taxpayer information to all the 50 exchanges. All 50 exchanges are to be ready by October 1st, right?

Mr. COHEN. Yes.

Mr. GOSAR. So will there be any problems with this massive amount of data sharing?

Mr. COHEN. No. And data sharing may not be exactly the right way to look at it. Basically what will happen is people will put information about their income in an application; that information will be verified by data that comes from the IRS, but there is no exchange of information from the IRS to the exchange; the information goes out, it is verified, and it comes back.

Mr. GOSAR. But it is still from the exchange going to the IRS, and that is where I am going.

Mr. COHEN. It is going to the data hub. Information is coming from the IRS to the data hub and from the exchange to the data hub, and there is a comparison and then there is an answer back. But the tax information isn't actually going to the exchange.

Mr. GOSAR. Gotcha. Okay, so what will the navigators and assisters tell individuals about the subsidy reconciliation process?

Mr. COHEN. They will give them accurate information and they will encourage them, certainly, to make sure that if their income situation changes over the course of the year, that they should update their account to make sure that that is reflected.

Mr. GOSAR. Okay, so will navigators and assisters tell individuals that a change in income, marital status, household size, or workplace insurance may make them ineligible for tax credits and, if not, almost certainly will impact the size of their tax credit?

Mr. COHEN. They will certainly let them know that if they have a change in circumstance, they need to provide that information, yes. It is important that they do so.

Mr. GOSAR. Okay. So will navigators and assisters tell individuals that the Government will be sending the tax credit to the insurance companies, but if an overpayment occurs, the IRS will come after the individual, not the insured, to collect that overpayment?

Mr. COHEN. They will certainly let them know that if their situation changes, they need to put that information in there so that they can avoid getting a tax credit to which it turns out they are not entitled to at the end of the year.

Mr. GOSAR. So will navigators and assisters tell individuals that the failure to report a change in income, marital status, household size, workplace insurance, and some other criteria may cause them to owe hundreds of thousands of dollars to the IRS when they file their taxes?

Mr. COHEN. Hundreds of thousands of dollars? I am not aware of that number.

Mr. GOSAR. Hundreds or thousands.

Mr. COHEN. Oh, hundreds or thousands. I see. You scared me there for a second.

Mr. GOSAR. The IRS and hundreds of thousands always scares a taxpayer.

Mr. COHEN. I think that it will be very important for people to understand that they need to update their information if their situation changes, and that information will certainly be provided by navigators, yes.

Mr. GOSAR. Okay. So what will a navigator or assister do if an individual applying for health insurance doesn't have a W-2 or an income tax return?

Mr. COHEN. I don't think it is a requirement that a person have a W-2 or an income tax return. If I understand the way the application works correctly, you can enter in the amount of income that you had, and if you have filed taxes, that is the data that will be accessible through the data hub from the IRS, what your tax return was last year, and that is what we will be checking against.

Mr. GOSAR. Okay, so what will the navigator or assister do if an individual reports that they are paid under the table?

Mr. COHEN. That is a good question. I will have to think about that and talk to folks.

Mr. GOSAR. We will expect an answer.

Couple last questions. Will you commit to the committee to getting us a list of all phone calls placed to whom they were made and the other solicitations that the Secretary made to fund Enroll America and for all other purposes?

Mr. COHEN. I think you are asking the wrong guy for that.

Mr. GOSAR. Well, you can carry the message back. I mean, you are the messenger from HHS, so you can be the messenger back.

Mr. COHEN. I am happy to be a messenger back.

Mr. GOSAR. Will you also commit to getting the committee a list of all the amounts that were promised or received?

Mr. COHEN. Same answer. I will take the message back. I can't commit anything to you because that is not my job.

Mr. GOSAR. Well, one thing I want to end with here is I have done working with patients with insurances, with privacy compliance for 25 years being a dentist. It is not a simple task at all. And, to me, when we see that we are still developing modules and that we don't have them in place, and we are coming up on June, and then we say that we already have some type of oversight made, I find it interesting that it is either the chicken or the egg. I think you have to have the modules first, before you outline a protocol of oversight. Wouldn't you agree?

Mr. COHEN. I think we are developing all those things and we will have them all in place in time for open enrollment in October.

Mr. GOSAR. Well, I think some of your comments I applaud, that you are looking at building these modules, but I also think that how you develop those modules develops your oversight plan, so something off the shelf isn't going to be applicable 100 percent of the time. So it seems to me you are going to build these modules and then behind it is going to be coming oversight. So we would

also like not only the modules, but the oversight plan to the committee as well.

Mr. COHEN. That is a fair point and we will work with you to get you that.

Mr. GOSAR. I thank you very, very much.

Seeing there are no other questions, I adjourn this meeting. Thank you.

[Whereupon, at 12:13 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Questions for Mr. Cohen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight

Representative James Lankford
Chairman
Subcommittee on Energy Policy, Health Care and Entitlements
Committee on Oversight and Government Reform

Representative Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs
Committee on Oversight and Government Reform

Hearing on "Examining the Concerns About ObamaCare Outreach Campaign"

1. Since March 23, 2010, has HHS transferred any funds to the IRS for the purpose of implementing ObamaCare? If so, how much money has been transferred to the IRS and for what purposes?

Answer: Since March 23, 2010, HHS has transferred approximately \$488 million to the IRS from the Health Insurance Reform Implementation Fund, which was created within the Affordable Care Act to assist with the implementation of the Act. This funding has been primarily used to implement tax changes, including the Small Business Tax Credit, expanded adoption credit, charitable hospital requirements, and support IT development for the Marketplaces.

2. Please explain the Training Module(s) for Navigators and Assisters, as it exists in its current form. Please describe the length of the training, the required percentage to pass each module, and the syllabus for the program.

Answer: CMS proposed a rule on April 5, 2013 that would establish training standards for Navigators and non-Navigator assistance personnel in Federally-facilitated Marketplaces, including State Partnership Marketplaces, and for non-Navigator assistance personnel in State-based Marketplaces that are funded with section 1311(a) Establishment grant funds. If the rule is finalized as proposed, these Navigators and non-Navigator assistance personnel will be required to complete up to 30 hours of an HHS developed training program, and pass an exam prior to helping consumers. The proposed training program would address the following topics:

- QHPs (including the coverage "metal" levels), and how they operate, including benefits covered, payment processes, rights and processes for appeals and grievances, and contacting individual plans;
- The range of insurance affordability programs, including Medicaid, the Children's Health Insurance Program (CHIP), and other public programs;
- The tax implications of enrollment decisions;
- Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums;

- Contact information for appropriate federal, state, and local agencies for consumers seeking additional information about specific coverage options not offered through the Marketplace;
 - Basic concepts about health insurance and the Marketplace; the benefits of having health insurance and enrolling through a Marketplace; and the individual responsibility to have health insurance;
 - Eligibility and enrollment rules and procedures, including how to appeal an eligibility determination;
 - Providing culturally and linguistically appropriate services;
 - Ensuring physical and other accessibility for people with a full range of disabilities;
 - Understanding differences among health plans;
 - Privacy and security standards for handling and safeguarding consumers' personally identifiable information;
 - Working effectively with individuals with limited English proficiency, people with a full range of disabilities, and vulnerable, rural, and underserved populations;
 - Customer service standards;
 - Outreach and education methods and strategies; and
 - Applicable administrative rules, processes, and systems related to Marketplaces and QHPs.
3. **During a briefing on April 18, 2012, HHS officials informed Committee staff that Navigators and Assisters would be able to take the modules an unlimited number of times. Can you confirm that this is accurate?**

Answer: CMS has not proposed a limit to the number of times an individual can take the exam. We will work with federal Navigator grant awardees to ensure that all individuals are qualified to provide these important services to consumers.

4. **What is HHS' oversight plan for Navigators and Assisters? Is the plan in writing (If so, please provide the Committee a complete, unredacted copy)? When was the plan formed? Does the plan ever anticipate evaluating individual Navigator or Assister personnel?**

Answer: Information related to the oversight and monitoring of Navigator grantees in the Federally-facilitated Marketplaces and State Partnership Marketplaces, as well as information about federal Navigator grantee responsibilities is discussed on pages 31-38 of the Navigator funding opportunity announcement. As discussed in the announcement, federal Navigator grantees must complete up to 30 hours of training, achieve a satisfactory passing score, submit quarterly financial reports and progress reports, be in frequent contact with Centers for Medicare & Medicaid Services (CMS) staff on the progress of their grant activities, and submit to audits when necessary and determined by OMB circulars, etc. HHS carefully monitors grantee performance and investigates allegations of inappropriate activity. The administrative and funding instrument used for this program will be a Cooperative Agreement, an assistance mechanism

in which substantial HHS programmatic involvement with the recipient is anticipated during the performance of the activities. Under each Cooperative Agreement, HHS' purpose is to support and stimulate the recipient's activities by involvement in, and otherwise working jointly with, the award recipient in a partnership role. To facilitate appropriate involvement during the period of this Cooperative Agreement, HHS and the recipient will be in contact at least once a month, and more frequently when appropriate.

HHS will assign specific Project Officers to each Cooperative Agreement award to support and monitor recipients throughout the period of performance. HHS Grants Management Officers, Grants Management Specialists, and Project Officers will monitor, on a regular basis, progress of each recipient. This monitoring may be by phone, document review, on-site visit, other meeting and by other appropriate means, such as reviewing program progress reports and Federal Financial Reports (FFR or SF-425). This monitoring will be to determine compliance with programmatic and financial requirements.

The FY2012 Consolidated Appropriations Act and the long-standing provisions included in OMB Circulars govern the use of appropriated funds, and apply to Navigator grantees. CMS may terminate any award for material noncompliance, including, but not limited to, violation of the terms and conditions of the award, failure to perform award activities in a satisfactory manner, improper management or use of award funds, or fraud, waste, abuse, mismanagement, or criminal activity. To the extent that State-based Marketplaces use section 1311(a) grant funds for Non-Navigator assistance personnel, they must do so consistent with the policies and interpretations that CMS has adopted for section 1311(a) Establishment grants.

5. What is HHS' plan for holding individual Navigators and Assisters accountable for their actions during work? For example, if a Navigator or Assister gives incorrect counsel and an individual becomes financially liable as a result of that mistake, what recourse will the individual have against the Navigator or Assister?

Answer: HHS carefully monitors grantee performance and will work with federal Navigator grantees through training and coordination to ensure that Navigators understand their role in appropriately assisting consumers through the eligibility and enrollment process. CMS may terminate any award for material noncompliance, including, but not limited to, violation of the terms and conditions of the award, failure to perform award activities in a satisfactory manner, improper management or use of award funds, or fraud, waste, abuse, mismanagement, or criminal activity. To the extent that State-based Marketplaces use section 1311(a) grant funds for Non-Navigator assistance personnel, they must do so consistent with the policies and interpretations that CMS has adopted for section 1311(a) Establishment grants.

6. What will a Navigator or Assister do if an individual reports to the Navigator or Assister that they are paid in cash or that they are paid under the table?

Answer: Navigators and non-Navigator assistance personnel are not responsible for determining anyone's eligibility for health insurance coverage and/or insurance affordability programs.

Providing accurate information is the responsibility of the applicant, who must attest to the accuracy of the data provided on an application.

The Marketplace Consumer Application, posted on the CMS website on April 30, 2013, requires an applicant's signature to affirm, "I'm signing this application under penalty of perjury which means I've provided true answers to all the questions on this form to the best of my knowledge. I know that I may be subject to penalties under federal law if I provide false and or untrue information."

Affordable Care Act section 1411(h) provides for penalties for the failure to provide correct information as a part of the eligibility process under certain circumstances. In addition, insofar as the application constitutes an application for Medicaid, 42 U.S.C. § 1320b-7 and 42 CFR 435.907(b) (effective January 1, 2014, 42 CFR 435.907(f)) require that the application be signed under penalty of perjury; the specific penalties applicable to false statements in connection with a Medicaid application depend upon state law. Further, Title XVIII of the United States Code provides other penalties that may be applicable in this context, depending on the facts (18 U.S.C. §§ 1001, 1621). The False Claims Act may supply additional penalties, depending on the facts (31 U.S.C. § 3729).

7. Please explain how Navigator grants will be awarded, and describe and explain the rubric HHS used to evaluate the grants.

Answer: Navigator grant applications will be scored by an expert, objective review panel. The Funding Opportunity Announcement that CMS released on April 9, 2013, outlines the criteria that will be used to evaluate applicants.

The review criteria are as follows (based on 100 points):

Type of entity (individual, organization, or consortium) and description of the community(ies) or group(s) the applicant expects to serve) (20 points)

- Description and location of the applying entity
- Description of the community(ies) expected to be served and why the applicant expects to serve the(se) community(ies).
- Location of community(ies) expected to be served

Scope of activities (35 points)

The applicant's plan must demonstrate how the applicant will:

- Maintain and execute expertise in eligibility, enrollment, and program specifications
- Conduct public education activities to raise awareness about the Exchange
- Provide information and services in a fair, accurate, and impartial manner, acknowledging other health programs including Medicaid and CHIP
- Facilitate selection of a QHP
- Utilize existing and/or developing new relationships with employers and employees, consumers, or self-employed individuals likely to be eligible for enrollment in a QHP
- Perform the statutory and regulatory duties of a Navigator for the entire length of the

cooperative agreement period

- Remain free of conflicts of interest during the term as a Navigator
- Ensure staff and volunteers complete all required training
- Reach specific populations within the community(ies) or group the applicant expects to serve, including individuals with limited English proficiency, populations underserved in the current health insurance market, consumers who would be served by Small Business Health Options Programs (SHOPs), and vulnerable populations
- Assist any consumer seeking assistance, including those who are not members of the community(ies) the Navigator expects to serve
- Make referrals to the appropriate State agency(ies) to assist enrollees with grievances, complaints, or questions about their health plan, coverage, or a determination related to their coverage
- Provide information and services in a manner that is culturally and linguistically appropriate to the needs of the community(ies) served by Exchanges, including individuals with limited English proficiency, and to ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act
- Comply with privacy and security standards and use computers, including laptops or tablets, in accordance with 45 C.F.R. § 155.260

Budget (15 points)

- Completeness of budget (to include SF-424A and Budget Narrative(s))
- Completeness/quality of explanations and justifications provided in Budget Narrative(s)
- Completion of a separate Budget Narrative for each State the applicant intends to serve
- Reasonableness of requesting funding according to tasks proposed
- Indication that computers, including laptops or tablets, will be used in accordance with 45 C.F.R. § 155.260 by each staff member handling consumer personally identifiable information while performing Navigator duties
- Ensure that funding from this opportunity will not be used for activities already funded through section 1311(a) of the Affordable Care Act

Accomplishments (15 points)

Applicant's track record and accomplishments in:

- Developing and maintaining relationships with key stakeholders within community(ies) or group(s) the applicant expects to serve including employers and employees, consumers (including uninsured and underinsured consumers) and/or self-employed individuals
- Assisting consumers, including those from vulnerable populations, in obtaining health care eligibility determinations and obtaining health insurance coverage
- Conducting public education and outreach activities
- Providing information and services to individuals with varying levels of education and financial and health literacy in a manner that is culturally and linguistically appropriate
- Working with individuals with limited English proficiency, individuals with disabilities, the populations underserved in the current health insurance market, and vulnerable

populations

Expertise of personnel (15 points)

Staff Expertise in:

- Private health insurance market
- Conducting public education and outreach activities
- Program eligibility and enrollment
- Working with individuals with limited English proficiency, individuals with disabilities, populations underserved in the current health insurance market, and vulnerable populations

- 8. Please explain how Assister grants will be awarded. Will HHS have any authority or input over how states award Assister grants? The state of California passed a secrecy law that allows the California State Exchange, Covered California, to refuse to disclose the identity of certain federal grant recipients as well as the amount of the award, indefinitely. Will California be required to report the recipient and amount of award to HHS? Will HHS make these records public?**

Answer: We expect each State-based Marketplace to set its own standards for its Navigator and non-Navigator assistance programs consistent with the law and the policies and interpretations that HHS has adopted for such programs. Thus, to the extent that the state uses section 1311(a) grant funds on its non-Navigator assistance program, the state must do so consistent with the policies and interpretations that HHS has adopted for section 1311(a) Establishment grants. Under our section 1311(a) Establishment grants monitoring program, HHS collects key organizational and funding information about state contractors who carry out activities funded by the grants. Additionally, section 1311(a) Establishment grantees are required to conduct reporting on entities receiving subawards of \$25,000 or more. Organizations or individuals that are determined ineligible are unable to receive federal funds and therefore cannot receive HHS awards. Furthermore, information about the Covered California outreach and education program is available on the internet at the following address:
<http://www.healthexchange.ca.gov/Pages/OutreachandEdProg.aspx>.

- 9. Do you believe taxpayers have a right to know how Federal taxpayer dollars are being spent to implement State-based exchanges?**

Answer: CMS agrees that transparency is a top priority. Details on the Health Insurance Exchange Establishment Grants made to states are available at <http://www.cms.gov/CCHIO/Resources/Marketplace-Grants/index.html>. CMS conducts detailed oversight of each state-based Marketplace and will continue to do so to ensure that taxpayer dollars are spent wisely.

- 10. You testified that 830 letters of intent have been received by HHS for the Navigator program at the date of the hearing. Has HHS reached out to any entities that have not written a letter of intent? If so, which entities?**

Answer: HHS staff have not reached out to any entities or individuals who did not send in a letter of intent.

11. What specific criteria will be used to ensure that successful [Navigator and Assister] applicants will demonstrate a past history of knowledge and expertise in the private insurance market?

Answer: The funding opportunity announcement (FOA) for Navigators in the Federally-facilitated Marketplace and State Partnership Marketplaces published on April 9, 2013, included detailed criteria for application review. Applicants for the federal Navigator grants will be evaluated on their experience assisting consumers, including those from vulnerable populations, in obtaining health care eligibility determinations and obtaining health insurance coverage and on their staff's expertise in the private health insurance market.

12. What specifically will Navigators and Assisters be required to tell everyone who they assist related to the individual mandate tax penalty?

Answer: Sections 1311(d)(4)(K) and 1311(i) of the Affordable Care Act, and the regulation implementing those provisions, 45 CFR 155.210, direct all Exchanges to award grants to Navigators that will provide fair and impartial information to consumers about health insurance, the Exchange, QHPs, and insurance affordability programs including premium tax credits, Medicaid and the Children's Health Insurance Program (CHIP); and that will provide referrals to consumer assistance programs (CAP) and health insurance ombudsmen for enrollees with grievances, complaints, or questions about their health plan or coverage. Navigators are an important resource for all consumers, particularly communities that are under-served by and under-represented in the current health insurance market. Navigators will not make eligibility determinations and will not select QHPs for consumers or enroll applicants into QHPs, but will help consumers through the eligibility and enrollment process. CMS proposed a rule on April 5, 2013 that would establish training standards for Navigators and non-Navigator assistance personnel in Federally-facilitated Marketplaces, including State Partnership Marketplaces, and for non-Navigator assistance personnel in State-based Marketplaces that are funded with section 1311(a) Establishment grant funds. If finalized as proposed, that rule would require all such assistance personnel to receive training on, among other topics:

- The tax implications of enrollment decisions;
- Eligibility requirements for premium tax credits and cost-sharing reductions, and the impacts of premium tax credits on the cost of premiums; and
- Basic concepts about health insurance and the Marketplace; the benefits of having health insurance and enrolling through a Marketplace; and the individual responsibility to have health insurance.

13. What specifically will Navigators and Assisters be required to tell everyone who they assist about the requirement to purchase health insurance?

Answer: See response to question 12.

14. Will Navigators and Assisters be required to tell everyone who they assist about the various exemptions to the mandate penalty? If so, what specifically will Navigators and Assisters be required to tell everyone who they assist about the exemptions to the mandate penalty?

Answer: See response to question 12.

15. What specifically will Navigators and Assisters be required to tell everyone who they assist about the tax credit reconciliation process?

Answer: See response to question 12.

16. Can entities in state-based exchanges serve as both Navigators and Assisters?

Answer: There is nothing in the Affordable Care Act which would prevent states from permitting entities in state-based Marketplaces to serve as both Navigators and Assisters. We expect each state to set its own standards for its Navigator and non-Navigator assistance programs, but states must establish such programs consistently with the policies and interpretations that HHS has adopted for such programs, and, to the extent that the state uses section 1311(a) grant funds for its non-Navigator assistance program, the state must do so consistently with the policies and interpretations that HHS has adopted for section 1311(a) Establishment grants. We note that under Section 1311(i)(6) of the Affordable Care Act, states may not fund their grants to Navigators with section 1311(a) funding.

17. Did HHS ever approach Congress for Congress to specifically fund state-based Navigator programs?

Answer: No, HHS has never requested funding for state-based Navigator grants.

