



A 501(c)(3) Nonprofit Corporation

November 7, 2016

Via Certified Mail

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
Office of the Inspector General
Investigations Division
1425 New York Avenue, NW
Suite 7100
Washington, DC 20530

Re: IRS and CMS use of Taxpayer Information to Market ObamaCare Subsidies

Dear Inspector General Horowitz:

I write on behalf of Cause of Action Institute, a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ We request that the Inspector General initiate an investigation into Centers for Medicare and Medicaid Services (“CMS”) and Internal Revenue Service’s (“IRS”) role in using taxpayer information to market Affordable Care Act (“ACA”) health insurance plans to individuals who have opted out of the program.

In an effort to boost enrollment in ACA programs, it appears the Obama Administration is attempting to market the ACA to individuals who declined coverage by using information obtained from individual tax returns.² A fact sheet released by CMS entitled “Strengthening the Marketplace by Covering Young Adults,” highlights CMS’s plan to boost ACA enrollment by using taxpayer information.³ According to the fact sheet, “[f]or the first time this fall, we will conduct outreach to individuals and families who paid the fee for being uninsured, or claimed an exemption from that fee, for 2015.”⁴ CMS’s decision to use protected taxpayer information raises serious concerns that CMS may be in violation of the law.

Federal laws protect the confidentiality of tax returns and tax information. According to 26 § U.S.C. 6103, it is unlawful for an employee of the United States or a State to “disclose any return or return information obtained by him in any manner in connection with his service...”⁵

¹ See CAUSE OF ACTION INSTITUTE, *About*, <http://causeofaction.org/about>.

² Lauren Clason, *Top Republicans Probe ObamaCare Marketing Proposal*, THE HILL, Sept. 22, 2016, available at <http://extra.thehill.com/healthcare/policy/297098-top-republicans-probe-obamacare-marketing-proposal>.

³ Centers for Medicare & Medicaid Services, *Strengthening the Marketplace by Covering Young Adults*, Fact Sheet, Jun. 26, 2016, available at <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-06-21.html>.

⁴ *Id.*

⁵ 26 § U.S.C. 6103.

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The law allows for tax information to be used for the limited purpose of determining ACA subsidy eligibility. It does not, however, permit CMS to market ACA subsidies to taxpayers who have already rejected ObamaCare.⁶ Further, the disclosure of protected taxpayer information by IRS raises additional concerns about whether the information is appropriately being safeguarded and how many individuals at CMS and throughout the government may have access to the information.

Cause of Action Institute respectfully requests that the Inspector General initiate an immediate investigation into CMS and IRS's roles in using protected taxpayer information to market ACA subsidies. Further, the Inspector General should do a full review to determine how many individuals throughout the government will have access to sensitive tax data containing personal identifiable information. The American taxpayers have a right to know who has access to their tax information and whether the federal government is breaking the law by using that information to market ObamaCare.

Sincerely,



Lamar Echols
COUNSEL

⁶ See Letter from Hon. Kevin McCarthy, et. al, Majority Leader, U.S. House of Representatives, to Hon. John Koskinen, Commissioner, IRS, Sept. 21, 2016, *available at* <https://www.majorityleader.gov/2016/09/21/mccarthy-scalise-and-brady-object-to-irs-misuse-of-taxpayer-info/>.