

United States Senate

WASHINGTON, DC 20510

SENT VIA ELECTRONIC COPY TO: Jim.Esquea@hhs.gov

February 29, 2016

The Honorable Sylvia M. Burwell
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

I am deeply troubled that the Department of Health and Human Services (HHS) has prioritized insurance companies over taxpayers by giving well-connected big businesses billions of dollars that belong to the American people in violation of federal law.

I am writing to demand that your agency reverse course, follow the law, and pay the taxpayers the money they are owed rather than continuing to dole out subsidies to insurance companies through the Affordable Care Act's (ACA) reinsurance program.

Section 1341(3)(B)(iii) of the ACA instructs you to collect \$20 billion total for reinsurance purposes from large group health insurers--\$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016. In addition to those collections, Section 1341(3)(B)(iv) instructs you to collect a total of \$5 billion to be deposited into the general fund of the U.S. Treasury--\$2 billion in 2014, \$2 billion in 2015, and \$1 billion in 2016. This additional \$5 billion was included to pay for some of the ACA's new spending. This is the plain reading of the law; neither collection was discretionary.

Regarding the expenditure of funds collected, the law clearly states:

“[A]ny contribution amounts described in paragraph (3)(B)(iv) shall be deposited into the general fund of the Treasury of the United States and may not be used for the program established under this section.”

This too is not a discretionary instruction.

For 2014 and 2015, however, HHS ignored the law and under-collected from insurance companies, treating the law's instruction as discretionary. As a result, HHS gave priority to payments to insurers rather than the Treasury.

In total, HHS intends to deposit only 12.5 percent (\$.5 billion) of the \$4 billion that is

owed to the Treasury for years 2014 and 2015.¹

By executive fiat you have denied the Treasury \$3.5 billion (\$2 billion for 2014 and \$1.5 billion for 2015) that it is owed. Your prioritization of funds is increasing the deficit and forcing future generations to incur greater debt to pay for irresponsible spending under the ACA's new entitlement programs.

According to the latest announcement,² HHS will start writing more checks to insurance companies for 2015 in March 2016. Consistent with your obligations under the ACA, no less than \$3.5 billion must be deposited into the general fund of the U.S. Treasury before any additional amounts are paid to insurance companies. I look forward to your prompt reply.

Sincerely,



Ben Sasse
U.S. Senator

¹ Department of Health and Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information & Insurance Oversight, "The Transitional Reinsurance Program's Contribution Collections for the 2015 Benefit Year," February 12, 2016, https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/RIC_2015ContributionsGuidance.pdf.

² *Ibid.*