

# United States Senate

WASHINGTON, DC 20510

May 12, 2016

The Honorable Sylvia Mathews Burwell  
Secretary  
U.S. Department of Health & Human Services  
330 Independence Avenue, SW  
Washington, DC 20201

The Honorable Jacob Lew  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Burwell and Secretary Lew:

On March 8, we wrote to you concerning the Transitional Reinsurance Program, created under Section 1341 of ObamaCare, which Congress created to limit the insurance industry's exposure to high cost care.<sup>1</sup> That letter requested a response by March 25. On April 13, Assistant Secretary for Legislation Jim Esquea responded on behalf of both the Departments of Health & Human Services and Treasury. Unfortunately, the response letter failed to answer most of our specific questions, as detailed below.

Below is a recitation of the questions in our March 8 request, along with the response received thus far:

Question for Secretary Burwell from 3.8.16 letter:

1. Does HHS plan to change allocations for 2016 in a manner that would make the U.S. Treasury whole for the diversions described above?

*The response provided general information about the rulemaking process used to determine the allocations of the Transitional Reinsurance Program, and specifically stated, "CMS sought public comment on all aspects of its proposal to implement a prioritization of reinsurance contributions to reinsurance payments over payments to the U.S. Treasury..." and further indicated, "we will not allocate reinsurance collections to administrative expenses or the U.S. Treasury until the reinsurance payment pool for a benefit period is funded."*

2. Which HHS officials were responsible for or had input into, Section E, Part 153 of the Section 1341 regulation? This should include not only the principle drafters but a list of offices and officials who had any role in advising or commenting on the substance of that Section.

*No substantive answer provided.*

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<sup>1</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148, at § 1341 (2010).

3. Which federal offices outside of HHS advised or commented on Section E, Part 153 of the Section 1341 regulation?

*No answer provided.*

4. Provide all documents dated from March 11 to May 27, 2014, regarding Subsection E, Part 153 of the Section 1341 regulation. This includes memorandum and correspondence within HHS and to or from other federal offices.

*The requested documents have still not been received.*

Question for Secretary Lew from 3.8.16 letter:

5. Did HHS seek Treasury's opinion on this issue? If so, when did HHS seek that opinion and what opinion was provided?

*No answer provided.*

6. What is Treasury's current position regarding the funds it is due under Section 1341?

*No answer provided.*

7. Does Treasury plan to recoup these funds?

*No answer provided.*

It is of utmost importance that your agencies cooperate and provide us with the relevant information requested given our role in overseeing the implementation of the Affordable Care Act. Thank you in advance for your prompt response to this request.

Please number your responses according to the corresponding question and respond no later than Friday, May 20, 2016. If you have questions, please contact Chris Armstrong with the Senate Finance Committee staff at (202) 224-4515 or Emily Bouck with the Office of Senator Marco Rubio at (202) 224-3041.

Sincerely,



Orrin G. Hatch  
Chairman  
Committee on Finance



Marco Rubio  
United States Senator  
Florida