

# United States Senate

WASHINGTON, DC 20510

October 8, 2014

Speaker John Boehner  
Office of the Speaker  
H-232, U.S. Capitol  
Washington, DC 20515

Dear Mr. Speaker:

The recently passed Continuing Resolution (CR), H.J.Res.124, is an example of Congress adhering to one of its primary constitutional duties – commonly referred to as the “power of the purse.” As you know, Article I, section 7, clause 1 says, “All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other Bills.” Moreover, Article I, section 9, clause 7 says, “No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.”

We write to you out of concern the Administration is planning to spend unappropriated and unauthorized funds through Obamacare’s risk corridor program. In addition to providing financial protection to insurance companies that offered exchange plans through a reinsurance program and a risk adjustment program, Obamacare also contains a risk corridor to distribute money from exchange plans that earned profits to exchange plans that suffered losses. However, the risk corridor program was not designed to be budget neutral and the program, at least as being contemplated by the Administration, puts taxpayers at risk of a large bailout if insurers systematically lose money on exchange plans. The House Committee on Oversight and Government Reform held two hearings this year on the potential Obamacare bailout and released a report which contains the insurance industries’ estimate of risk corridor payments. According to the information provided by insurers, almost all of them expect to receive funds through the risk corridor program for this plan year with an aggregate net receipt likely approaching \$1 billion.

The Oversight report detailed how the White House has been actively involved with increasing the size of the bailout, in an apparent attempt to misuse taxpayer money on this bailout regardless of the law. In May 2014, the Department of Health and Human Service’s Office of General Counsel wrote a letter to the Government Accountability Office claiming that the risk corridor collections under Obamacare are user fees. HHS argued that as user fees, they have the ability to collect and spend risk corridor collections for insurance plan year 2014 under very broad authority granted to HHS by the Consolidated Appropriations Act of 2014. However, the Government Accountability Office (GAO) issued a legal opinion in September that concluded HHS would need an additional appropriation in order to make payments in FY 2015 corresponding with the 2014 plan year. Without that appropriation, any money spent to cover insurance company losses under the risk corridor program would be unlawful.

HHS’s new interpretation also contradicts the statutory language establishing the program while misinterpreting the long-standing definition of user fees. The risk corridor program is clearly defined by

Obamacare as a “payment adjustment system.” The federal government does not provide a good or service in exchange for the risk corridor collections, which is the purpose of user fees. Rather, the risk corridors subsidize and redistribute collections to health insurance companies that lose money.

As you know, the current CR will expire on December 11, 2014. Congress will undoubtedly have its feet held to the fire by the American people to pass another stop-gap appropriations bill avoiding a government shutdown. Though Congress will determine the expiration date of the next CR later this year, it is likely the next CR will extend to a date in 2015 when risk corridor payments are reconciled.

Unfortunately, President Obama and his administration have exhibited their intent to disregard the law and ignore the Constitution. At the Constitutional Convention, our nation’s founders debated ways to ensure that the Executive would not spend money without Congressional authorization. They agreed that Congress should control public funds (not the President or executive branch agencies) because Congress directly represents the people. The President intends to ignore Congress’s explicit and exclusive authority by spending money on the risk corridor program without an appropriation from Congress.

The American people expect us, as Members of Congress, to fulfill our Oath of Office and defend the Constitution. Therefore, we must act to protect Congress’ power of the purse and prohibit the Obama administration from dispersing unlawful risk corridor payments providing for an Obamacare taxpayer bailout.

Sincerely,



Mark



Martin J. E.



John Barrasso



D. D. Witt



Ted



Mike Enzi

John McLaughlin Jeff Sessions

Rob Fischer John McCain

John Boozman Pat Roberts

Rand Paul Tom Cotton