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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

AMBER COTTLE, STAFF DIRECTOR
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May 14, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Sebelius:

As the Republican Members of the Senate Committee on Finance, one of the key committees of jurisdiction over health care issues, we were troubled by the news reports concerning your interactions with health care industry executives asking for donations of money to assist with funding for enrollment efforts related to the health care insurance exchanges. Our initial reaction is that this appears at best to be an inherent conflict of interest and at worst a potentially illegal augmentation of appropriation.

These calls raise several important issues. First, soliciting funds from the very companies or organizations that the Department of Health and Human Services (HHS) regulates could be a serious conflict of interest. Companies and organizations should never be pressured for money because it sends the message that contributions are necessary to secure favorable regulatory decisions—creating a “pay to play” environment—or to avoid regulatory reprisals. This is even more pronounced in this instance because the individuals that you were allegedly contacting to solicit donations head up the same entities who may have bid to participate in the marketplace exchanges.

Secondly, the appropriations process was designed by the Constitution to assure that only Congress, an elected body, sets the amount of funds that can be spent to implement a given law. Congress appropriated a certain amount of funds for use by HHS to implement the Patient Protection and Affordable Care Act (PPACA). Circumventing the appropriations process to raise additional funds could be a serious violation of appropriations law.

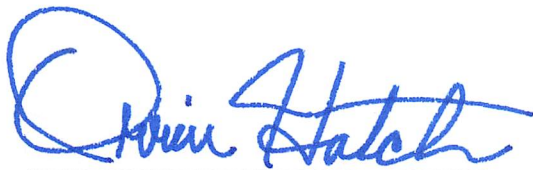
Finally, the manner in which Congress learned about these actions, through the press, is also troubling. One of the continued issues that has been raised to HHS from this Committee over the past three years has been the lack of transparency from HHS to Congress about what actions are being taken, and when, with respect to implementation of PPACA. This is yet another example of the Administration initiating actions without consulting with or informing Congress ahead of time.

To help us better understand this issue, please provide us with answers to the following questions:

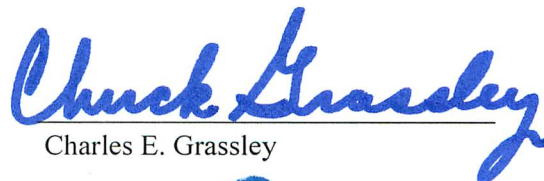
1. What legal authority permits HHS employees to solicit donations from non-government entities for PPACA implementation?
2. Who within HHS was involved in making the decision to contact private entities for donations?
3. Was the Office of General Counsel for HHS consulted and, if so, what guidance did they provide governing these interactions?
4. Besides Secretary Sebelius, have any other HHS employees solicited donations in their official capacity as a federal employee?
5. How much money has been raised by HHS for the implementation of PPACA through donations?
 - a. Is the money coming directly to HHS or is it going elsewhere?
 - b. If to HHS, in which account(s) were the funds deposited?
 - c. What agency, individual, or entity has fiduciary authority over the funds?
 - d. Of the donated funds, how much has been spent by HHS or other entities to date?
 - e. Who has donated funds?
 - f. If funds are donated, do the donors have the right to say which programs the funding goes toward?
6. How much money has been raised by HHS employees for other entities supporting enrollment under PPACA?
7. Have HHS employees solicited donations on behalf of any nonprofit organization? If so, which one(s) and how much
8. How many federally funded work hours were used by Secretary Sebelius and other HHS employees to solicit donations?
9. What assurances do organizations and companies that elected not to donate funds have that HHS would not retaliate against them in future regulatory or contracting actions?
10. Conversely, what measures has HHS taken to be sure that it has not favored organizations that have donated funds? What audit or oversight mechanisms are in place to ensure that the list of those who have provided funds is not seen by the contracting or program employees making decisions about contract awards and/or other determinations regarding participation in the exchanges?

We appreciate your timely response to this request and your full cooperation in providing this information by no later than June 7, 2013. Please feel free to contact Kim Brandt of the Committee staff at 202-224-4515 should you have any questions.

Sincerely,



Orrin G. Hatch



Charles E. Grassley



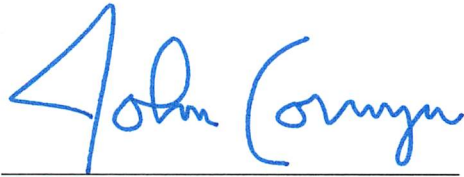
Mike Crapo



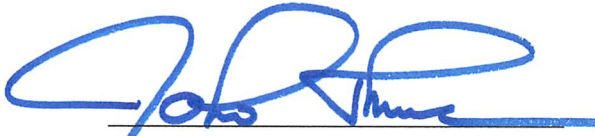
Pat Roberts



Michael B. Enzi



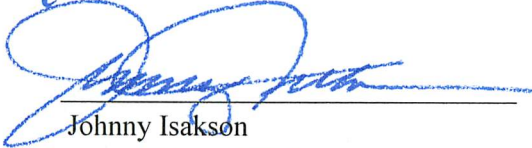
John Cornyn



John Thune




Richard Burr



Johnny Isakson



Rob Portman



Patrick J. Toomey