

BARBARA A. MIKULSKI, MARYLAND, CHAIRWOMAN

PATRICK J. LEAHY, VERMONT  
TOM HARKIN, IOWA  
PATTY MURRAY, WASHINGTON  
DIANNE FEINSTEIN, CALIFORNIA  
RICHARD J. DURBIN, ILLINOIS  
TIM JOHNSON, SOUTH DAKOTA  
MARY L. LANDRIEU, LOUISIANA  
JACK REED, RHODE ISLAND  
FRANK R. LAUTENBERG, NEW JERSEY  
MARK L. PRYOR, ARKANSAS  
JON TESTER, MONTANA  
TOM UDALL, NEW MEXICO  
JEANNE SHAHEEN, NEW HAMPSHIRE  
JEFF MERKLEY, OREGON  
MARK BEGICH, ALASKA

RICHARD C. SHELBY, ALABAMA  
THAD COCHRAN, MISSISSIPPI  
MITCH MCCONNELL, KENTUCKY  
LAMAR ALEXANDER, TENNESSEE  
SUSAN M. COLLINS, MAINE  
LISA MURKOWSKI, ALASKA  
LINDSEY GRAHAM, SOUTH CAROLINA  
MARK KIRK, ILLINOIS  
DANIEL COATS, INDIANA  
ROY BLUNT, MISSOURI  
JERRY MORAN, KANSAS  
JOHN HOEVEN, NORTH DAKOTA  
MIKE JOHANNIS, NEBRASKA  
JOHN BOOZMAN, ARKANSAS

CHARLES E. KIEFFER, STAFF DIRECTOR  
WILLIAM D. DUHNKE III, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

<http://appropriations.senate.gov>

May 22, 2014

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

Dear Secretary Sebelius:

We are troubled by the recent *Washington Post* article that indicates “the government may be paying incorrect subsidies to more than 1 million Americans for their health plans” through the exchanges established under the Affordable Care Act (ACA). The article calls into question your Department’s commitment to safeguard taxpayer dollars, the accuracy of your past statements, and your overall ability to implement the health care law. These revelations underscore the importance of your accountability to Congress and the American people and deepen our frustration that you chose not to appear at the recent Senate Appropriations Committee oversight hearing and therefore prevented us from discussing your promise to implement income verification and related payments with you in person. We respectfully request that you provide additional information about how you plan to prevent further incorrect subsidy payments and recover misused taxpayer dollars.

The Congressional Budget Office estimates that the federal government will provide over \$1 trillion in Exchange subsidies and related spending from 2015 to 2024. As Ranking Members of the Senate Appropriations Subcommittees that oversee Department of Health and Human Services (HHS) and Internal Revenue Service (IRS) spending, we have been closely monitoring the implementation of these costly provisions trying to make sure that taxpayer dollars are protected from waste and abuse.

In July 2013, the Administration published a final rule that rescinded the ACA requirement that Exchanges verify consumers’ incomes and indicated the government would “accept the applicant’s attestation [regarding eligibility] without further verification.” We were astounded by this provision, which essentially sought to provide billions of dollars in subsidies to millions of Americans under the “honor system.” In response, members of the Senate Appropriations Committee unanimously supported an amendment to the FY2014 Labor, HHS, and Education, and Related Agencies Appropriations bill that required the Secretary of HHS to verify the eligibility of individuals receiving tax credits and cost-sharing reductions on the ACA Exchanges. The language was later included in the FY2014 Continuing Appropriations Resolution which became law on October 17, 2013. On January 1, 2014, you submitted letters to the Senate and the House of Representatives certifying that the agency had implemented the systems to carry out income verifications.

Your certification is contradictory to the content of the recent media report which signals that the computer capability to verify individuals’ income “does not exist.” The report states that, “potentially hundreds of thousands of people are receiving bigger subsidies than they deserve” and that the Administration “has been unable so far to fix the errors.” It appears that despite our efforts to safeguard taxpayer dollars, your agency has yet again misled Congress and the American public. Not



only are taxpayer dollars being distributed incorrectly, but hundreds of thousands of Americans may be in for a shock next April when they learn they must repay money to the Treasury because your agency miscalculated their subsidies. Accordingly, the IRS could be on the hook to fix a large-scale problem that should have never occurred in the first place.

These failures represent a disturbing trend, and the implementation of the ACA demands more accountability and transparency. Therefore, to better understand the scope and potential costs of this problem, please address the following questions:

- What is the scope of this subsidy payment issue? Please include your best estimates about how many individuals have received incorrect subsidies and the total dollar amount of these inaccuracies.
- You certified that numerous systems and processes were implemented to carry out your income verification responsibilities, yet media reports indicate that these systems are defective or not yet built. When did you become aware of these subsidy payment issues? Why are potentially millions of Americans receiving incorrect subsidies? Are all the systems necessary to determine subsidy eligibility fully in place and working properly?
- What systems have you installed or do you plan to implement to fix the subsidy payment issue?
- How much does your Department estimate that these systems and efforts will cost? Please explain from which accounts you intend to draw this funding.
- The IRS is charged with collecting subsidy overpayments beginning in April 2015, but the agency is limited by the amount it can collect and such collections can only be requested from those filing a tax return. When do you anticipate that the Exchange income verification issues will be fixed? What role will the IRS play in recouping these payments?
- If some of the affected individuals cannot repay these subsidies, will they be considered delinquent in their taxes?
- The automatic payment system to insurance companies will not be built until next year and the Centers for Medicare & Medicaid Services pays subsidies directly to insurance companies. How will the subsidy payment issue affect the current manual review of payments to insurance companies? Will this cause another delay in processing the payments and building the automatic payment system?
- How will these subsidy payment issues impact insurance rates in 2015?

You should understand the American people's frustration with this law and its failed implementation. The Administration's record of tweaking, erasing, and re-writing the law is unacceptable and Americans are demanding more accountability. This is yet another circumstance where Americans feel they cannot depend on the law and promises made by you about its implementation. We urge you to reverse this pattern and work with Congress to rectify these subsidy payment issues. Thank you for your prompt attention to this matter and we ask that you provide a response to our questions within 14 days.

Sincerely,



Mike Johanns  
Ranking Member  
Senate Appropriations Subcommittee  
on Financial Services and General Government



Jerry Moran  
Ranking Member  
Senate Appropriations Subcommittee  
Labor, HHS, and Education