

United States Senate

WASHINGTON, DC 20510

May 29, 2013

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Inspector General Levinson,

Major news outlets in recent weeks have reported that U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius is raising money from the private sector—including from health care executives—for use by a private entity, Enroll America, that is helping to implement the Patient Protection and Affordable Care Act (PPACA).

These activities call into question whether appropriations and ethics laws are being followed. The Antideficiency Act prohibits entering into contracts or obligations or accepting voluntary services for the United States in excess of available appropriations. The prohibition on certain voluntary services in 31 U.S.C. §1342 and the restriction of the use of appropriated funds to their intended purpose in 31 U.S.C. §1301(a) in the “rule against augmentation of appropriations” prevents “a government agency from undercutting the congressional power of the purse by circuitously exceeding the amount Congress has appropriated for that activity.”¹ And the Office of Government Ethics Rule §2635.808 prohibits fundraising in an official’s private capacity from any person or entity that is regulated by that official’s agency.

As Members of the key committees of jurisdiction over issues involving HHS, we are writing to request that the HHS Office of Inspector General (OIG) independently examine whether the fundraising activities reportedly carried out by HHS Secretary Kathleen Sebelius violate these laws. As the *Washington Post* editorial board stated in a recent editorial, in their opinion the Secretary’s actions were “dancing around serious ethical lines.”² We believe the OIG is well-positioned to impartially examine any and all evidence regarding these practices on the part of Secretary Sebelius or other HHS officials.

The OIG’s statutory independence from HHS is clearly stated in the Inspector General Act of 1978 which created “independent and objective” offices for purposes including keeping “Congress fully and currently informed about problems and deficiencies relating to the administration of ... programs and operations and the necessity for and progress of corrective action.”³ Maintaining this independence is critical for OIG to successfully fulfill its mission of protecting beneficiaries and holding HHS accountable for properly administering hundreds of billions of taxpayer dollars.

¹ GAO-06-382SP Appropriations Law Vol II, page 6-162.

² May 18, 2013, *Washington Post*, “Editorial: Kathleen Sebelius Dances on an Ethical Line.”

³ Available online, <http://www.ignet.gov/pande/leg/igactasof1010.pdf>.

News reports center on allegations that Secretary Sebelius solicited individuals and entities in the private sector to make large financial donations or provide other support to Enroll America, a 501(c)(3) non-profit organization specifically created to support HHS's implementation of PPACA and run by a former President Obama administration White House aide.⁴ Administration officials told *The New York Times* that "private fundraising was necessary because Congress had refused to provide enough money to carry out the health care law."⁵

In the last two weeks, additional facts have been reported:

- An HHS spokesman said the Secretary's efforts included meetings, calls, and events with 18 categories of individuals and organizations since January, including retail pharmacies, insurers, pharmaceutical companies, and hospitals.⁶
- An HHS spokesman said the Secretary solicited funds from H&R Block and the Robert Wood Johnson Foundation and "only asked the others for technical advice and nonfinancial support because they were regulated by her department."⁷
- Administration officials told *The New York Times* that the Secretary "secured \$10 million from the Robert Wood Johnson Foundation and a pledge of about \$500,000 from H&R Block" which plans to help individuals apply for tax credits under the new law.⁸
- *The Hill* reported that "[t]he links between a nonprofit promoting President Obama's healthcare law and the White House have created an 'air of expectation' that insurers will contribute to the group, according to an insurance industry official." Enroll America "has come to feel like 'just an arm of the administration,' said one official who works closely with insurers."⁹
- *The Hill* also reported that "[c]urrent and former administration officials have taken on leadership and fundraising roles for Enroll America" and President "Obama himself made a vague but personal appeal for a close partnership with insurers, which some in the industry saw as a precursor to direct fundraising pitches."¹⁰

If true, these statements from the administration and the news reports would suggest that (1) the Secretary has specifically asked for financial support from at least two private entities, (2) the Secretary has asked entities she regulates to support private efforts, (3) that solicitation has been

⁴ See, e.g., Sarah Kliff, "Budget request denied, Sebelius turns to health executives to finance Obamacare," *The Washington Post*, May 10, 2013 at <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare>.

⁵ *Id.*

⁶ Alex Wayne, "Sebelius Limited Fundraising for Health Law to Two Calls," *Bloomberg*, May 16, 2013; Kyle Cheney, "HHS Defends Sebelius's Fundraising," *Politico Pro*, May 15, 2013.

⁷ *Id.* at *Bloomberg*.

⁸ Robert Pear, "Potential Donors to Enroll America Grow Skittish," *The New York Times*, May 19, 2013.

⁹ Sam Baker, "Health Watch: Insurers feel pressure from health group with ties to White House," *The Hill*, May 23, 2013.

¹⁰ *Id.*

The Honorable Daniel R. Levinson

May 29, 2013

Page 3 of 4

broad and has been taking place for months, (4) that these solicitations were in response to Congress's refusal to appropriate more funds for PPACA implementation, (5) that the Secretary and other government officials may be attempting to raise funds for Enroll America from health insurers, and (6) there are close ties and substantial coordination between the Administration and Enroll America.

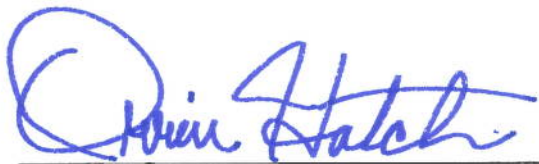
While we recognize that under current law there are certain circumstances in which Executive Branch officials might be allowed to participate in fundraising in an official capacity, the precise nature and appropriateness of Secretary Sebelius's activities is not clear from public reports.¹¹ We believe a systematic, independent investigation of the matter is necessary to confirm the facts in the case, as well as to detail to what extent any laws, regulations, or internal guidance were not adhered to. Furthermore, we believe OIG has an important role in reviewing the ethical implications of soliciting donations from entities who are regulated by HHS or may engage in future business with HHS.

In your role as Inspector General for HHS, we believe it is incumbent upon your office to initiate an investigation to identify and verify the facts related to this matter. Indeed, the very purpose of an investigatory body is to investigate possible wrongdoing and determine whether ethical or legal bounds have been exceeded. Congress relies on your independence and objectivity in identifying the facts so a determination can be made as to what issues need to be pursued.

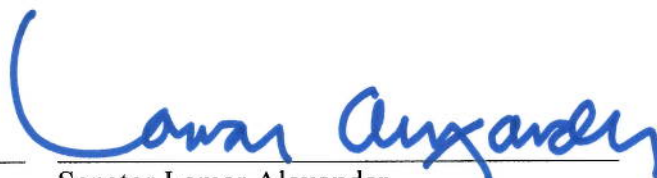
Therefore, given the possible conflict of interest as well as reports that these activities were undertaken to avoid appropriations limits, as ranking members on committees of jurisdiction, we request you direct the resources of your office to be used to thoroughly investigate these serious reports. We further request that you relay to us, as soon as practical, the relevant laws, regulations, and guidance pertaining to what types of fundraising are legally and ethically disallowed or inappropriate by the Secretary and other HHS employees. Please report to us by June 14, 2013, to confirm that your office will be looking into these issues. When the review is completed, we would like a detailed briefing on your findings.

Thank you for your prompt attention to this matter.

Sincerely,



Senator Orrin Hatch
Ranking Member
Finance Committee



Senator Lamar Alexander
Ranking Member
Health, Education, Labor and Pensions Committee

¹¹ 5 C.F.R. sec. 2635.808(b).

The Honorable Daniel R. Levinson

May 29, 2013

Page 4 of 4

A handwritten signature in blue ink that reads "Tom Coburn". The signature is written in a cursive style with a long horizontal stroke at the end.

Senator Tom Coburn

Ranking Member

Homeland Security and Governmental Affairs Committee