FREEDOM PARTNERS

TO:	Interested Parties
FROM:	Nathan Nascimento, Senior Policy Advisor, Freedom Partners Chamber of Commerce
DATE:	September 14, 2016
RE:	Stop Obamacare Bailouts

INTRODUCTION & BACKGROUND

While much of the recent coverage of the Affordable Care Act has centered on rising premiums, co-op failures, and the departure of health insurance companies from marketplace exchanges, one crucial issue has largely been ignored: The Obama administration and insurance companies' quiet lobbying campaign to secure taxpayer-funded bailouts – a dangerous move that would reward special interests, prop up the failing law, and harm Americans for years to come.

Their demands center on the imminent expiration of two Obamacare programs: the **Transitional Reinsurance Program** and the **Risk Corridors Program**.

When supporters of Obamacare forced their uncompromising health care vision on the American people, they refused to admit how unstable – and risky – the government controlled health care market would be. To gain the support of insurers, lawmakers included these programs to stabilize the market and protect insurers during Obamacare's first few years. They were specifically designed to expire by 2017, by which point Obamacare's authors assumed the law would be stable. Instead, the law is more precarious than ever – hence insurers' campaign to extend these two programs.

Elected officials who are serious about delivering real health care solutions for Americans should reject the calls by special interests for a taxpayer-funded bailout of Obamacare. The problem with Obamacare remains the law itself, not the expiration of these two programs.

CURRENT SITUATION

Since Obamacare's passage, both of these temporary programs have repeatedly sacrificed the interests of hardworking taxpayers to boost the bottom line of health insurers. Here is an explanation of the programs and a brief look at the current status of efforts to bail out Obamacare.

TRANSITIONAL REINSURANCE PROGRAM

The Transitional Reinsurance Program, funded by a new tax levied on all insurance companies, provides reimbursement to insurers that enroll high-cost individuals in health plans on the Obamacare exchanges. The Center for Medicare and Medicaid Services (CMS) oversees this program and is responsible for collecting and redistributing these dollars to insurance companies that are losing money.

The law mandates that CMS deposit $5 billion of the taxes collected from insurers into the U.S. Treasury to help cover some of Obamacare's astronomical costs. This occurs through a set payment schedule over the first three years of the program. The law also prohibits CMS from using these dollars intended for the Treasury to reimburse health insurers through the reinsurance program. The law clearly states in section 1341(b)(4) that the fees *"…shall be deposited into the general fund of the Treasury of the United States and may not be used for the [reinsurance] program."*

But CMS has repeatedly broken the law's plain text – and is stealing from taxpayers as a result. To date, CMS has failed to remit a single penny that it owes the U.S. Treasury under the Transitional Reinsurance Program. The law's **explicit** instructions required CMS to pay $2 billion in 2014, $2 billion in 2015, and $1 billion in 2016. After responsible elected officials uncovered CMS' unlawful activities, the agency promised to deposit $500 million into the Treasury by November, but there are no guarantees this will happen.

Taxpayers must receive the money they are legally owed. Legislation offered by U.S. Sen. Ben Sasse (S 2803) and Rep. Mark Walker (HR 5904), called the Taxpayers Before Insurers Act, would slash the administrative budget of the Department of Health and Human Services (HHS) to recoup the $5 billion owed to taxpayers. This deserves to be passed.

Members of Congress have received communications from insurers and other special interests demanding that any attempts to recover these dollars be stopped. The Obama administration has also joined with these special interests to demand that Obamacare's reinsurance program be extended, potentially with taxpayer money. Lawmakers must resist these demands – taxpayers should not be on the hook for this failing law.

RISK CORRIDORS

The Risk Corridor Program insulates health insurers from extreme losses and gains stemming from their health insurance plan pricing. The program was never intended to be a subsidy for plans; rather, it was a program implemented to correct mispriced plans. In 2015 and 2016, Congress required that risk corridors remain budget neutral – as intended when the law was passed – which limits the program's funds to those dollars collected from taxes on insurers.

Risk corridors threaten to expose taxpayers to another wasteful bailout. Since it cannot spend more money than it takes in, the program has consistently failed to raise enough funds to pay insurers for their massive losses – another sign of Obamacare's significant design flaws. Insurers incurred $2.87 billion in losses but only gathered $362 million in risk corridor contributions.

Insurers and the Obama administration are now seeking to increase funding by any means possible. In a recent memo, Andy Slavitt, the acting CMS administrator, reassured insurers that CMS would pay all of its outstanding payments in full. Soon after, health insurers and health care co-ops began filing lawsuits to seek their full payment. This is a transparent attempt to manipulate the justice system to force taxpayers to bail out another failed Obamacare program.

Additionally, HHS released a new report indicating that they will *"explore other sources of funding for risk corridors payments, subject to the availability of appropriations. This includes working with Congress on the necessary funding for outstanding risk corridors payments."*

Billions of dollars are at stake if either the federal courts or Congress force taxpayers to bail out insurers for their losses. Members must be proactive to stop this bailout from occurring by expressly prohibiting this action.

BUST THE BAILOUTS

Even if these two programs expire as planned, insurers and lawmakers could still conspire to put taxpayers on the hook for the remaining 2014 payments and the full 2015 and 2016 payments – a bailout that could reach several billions of dollars. Congress should be proactive and take measures to permanently extend the risk corridor budget neutrality provision to prevent a bailout of insurers and this failing law. Congress should also refuse to extend or expand reinsurance so as to protect taxpayers.

Congress cannot succumb to special-interest pressure and allow these massive corporate welfare programs to continue. Therefore, Congress must reject the pleas of special interests and:

1. Allow the Transitional Reinsurance Program and Risk Corridors Program to sunset at the end of this year, as planned.
2. Recoup all taxpayer dollars unlawfully given to insurers under the Transitional Reinsurance Program by withholding any future payments to the reinsurance program and passage of the Taxpayers Before Insurers Act (S. 2803/ HR 5904).
3. Reject all efforts by the administration and supporters of the law to use taxpayer dollars to bail out health insurers and proactively pass legislation that locks in budget neutrality.
4. Prevent any new programs that will continue to prop up this failing law and enrich special interests.

Obamacare's mounting failures stem from its fundamental flaws, not the anticipated expiration of these two programs. Bailing out health insurers would do nothing to stop the law's downward spiral of fewer choices, higher prices, and less control for consumers. All it would do is put special interests ahead of Americans' interests.

Learn more about Bust the Bailouts.