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ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

March 8, 2016

Scott P. Serota
President and CEO
Blue Cross Blue Shield Association
1310 G Street, N.W.
Washington, DC 20004

Dear Mr. Serota:

Pursuant to Rule X of the House of Representatives, the Committee on Energy and Commerce is examining the reinsurance program established under Section 1341 of the Patient Protection and Affordable Care Act (PPACA). As part of this oversight, the Committee is seeking information from your organization, Blue Cross Blue Shield Association (BCBSA), to assist us in understanding the reinsurance payments made to insurers by the Centers for Medicare and Medicaid Services (CMS).

Under PPACA's reinsurance program, CMS collects contributions from health insurers on behalf of all group health plans, and then uses those contributions to make reinsurance payments to insurers who enroll high-risk individuals. The law also requires that a portion of the contributions to the reinsurance fund be returned to the U.S. Treasury. Section 1341 states that a total of $5 billion "shall be deposited into the general fund of the Treasury of the United States and may not be used for the [reinsurance] program."[1] On February 12, however, CMS announced its intent to divert funds from the U.S. Treasury to pay for reinsurance payments to health insurers.[2] CMS stated that $2 billion for 2014 and nearly $1.5 for 2015 would be diverted from the U.S. Treasury to insurance companies for reinsurance payments.[3]

CMS's actions violate federal law. PPACA clearly states that funds allocated to the U.S. Treasury cannot be used for reinsurance payments to health insurers.[4] A legal memorandum

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[1] 42 U.S.C. § 18061(b)(4).
[2] Centers for Medicare and Medicaid Services, *The Transitional Reinsurance Program's Contribution Collections for the 2015 Benefit Year*, Feb. 12, 2016.
[3] *Id.*
[4] 42 U.S.C. § 18061(b)(4).

authored by the non-partisan Congressional Research Service (CRS) also questions the legality of CMS's decision, concluding that CMS actions "appear to be in conflict with a plain reading of §1341(b)(4)."[5] The statute unambiguously states that each health insurer's contribution to the reinsurance program must contain an amount that reflects the Treasury's proportionate share, and that those shares must be deposited to the U.S. Treasury. CRS notes that "a contrary agency interpretation would not be entitled to deference under *Chevron*."[6]

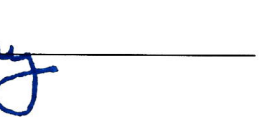
Although some reinsurance payments have already been disbursed to insurance companies, the Committee understands that substantial payments have not yet been made. If CMS continues to make these payments to insurers, it would constitute a violation of the Anti-Deficiency Act. Additionally, given the collaborative relationship between insurance companies and their regulators, there have been questions raised about the role of insurance companies in securing and negotiating reinsurance payments from CMS.

To assist the Committee in addressing these concerns, please provide a briefing to Committee staff no later than March 15th, 2016. Please also provide all documents referring or relating to reinsurance program payments, including but not limited to, communications between and among employees or agents of BCBSA and employees or agents of the federal government, by March 22nd, 2016.

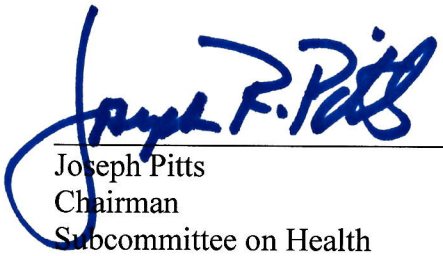
An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Emily Felder or Jessica Donlon with the Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations



Joseph Pitts
Chairman
Subcommittee on Health

[5] Memorandum to the Committee on Energy and Commerce regarding information on the ACA Transitional Reinsurance Program, (Feb. 23, 2016) (on file with Committee).
[6] *Id.*

cc: The Honorable Frank Pallone, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Gene Green, Ranking Member
Subcommittee on Health