

**Congress of the United States**  
**Washington, DC 20515**

September 22, 2016

The Honorable Sylvia Matthews Burwell  
Secretary  
United States Department of Health and Human Services  
Washington, D.C.

Dear Secretary Burwell:

In a memo dated September 9, 2016 regarding risk corridors payments for 2015, the Centers for Medicare & Medicaid Services notes, "HHS will record risk corridors payments due as an obligation of the United States Government for which full payment is required."<sup>1</sup>

As you know, payments into the risk corridors program have failed to compensate for requested disbursements. To ensure the program does not become an uncapped bailout fund for insurance companies, Section 225 of Public Law No: 114-113<sup>2</sup> explicitly prohibits any appropriated funds from being used to make risk corridors payments.

With Congressional intent clearly opposed to appropriating funds to support the program, we find the final paragraph of the memo to be disturbing:

"We know that a number of issuers have sued in federal court seeking to obtain the risk corridors amounts that have not been paid to date. As in any lawsuit, the Department of Justice is vigorously defending those claims on behalf of the United States. However, as in all cases where there is litigation risk, we are open to discussing resolution of those claims. We are willing to begin such discussions at any time."

Any attempt to settle these cases out of court as a backdoor way to direct taxpayer dollars to insurance companies through the Judgment Fund will be met with the strictest scrutiny from Congress. We would note a 1998 opinion from the Justice Department's Office of Legal Counsel, which states:

"The Judgment Fund does not become available simply because an agency may have insufficient funds at a particular time to pay a judgment. If the agency lacks sufficient funds to pay a judgment, but possesses statutory authority to make the payment, its recourse is to seek funds from Congress."<sup>3</sup>

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<sup>1</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-for-2015-FINAL.PDF>

<sup>2</sup> <https://www.congress.gov/bill/114th-congress/house-bill/2029/text>

<sup>3</sup> <https://www.justice.gov/sites/default/files/olc/opinions/1998/07/31/op-olc-v022-p0141.pdf>

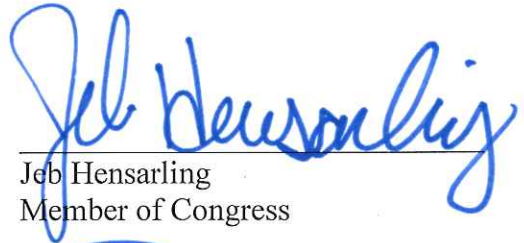
Furthermore, under Section 3(f)(2)(C) of H. Res. 5, the U.S. House of Representatives retains the authority to initiate civil action "regarding the failure of the President, the head of any department or agency, or any other officer or employee of the executive branch, to act in a manner consistent with that official's duties under the Constitution and laws of the United States with respect to implementation of any provision of the Patient Protection and Affordable Care Act."<sup>4</sup>

Should the administration seek to make settlements in any pending lawsuits regarding risk corridors payments, we remain committed to exhausting all legislative and judicial options to ensure the power of the purse vested in Congress under the Constitution is respected and maintained.

Sincerely,



Robert Pittenger  
Member of Congress



Jeb Hensarling  
Member of Congress



Joe Pitts  
Member of Congress



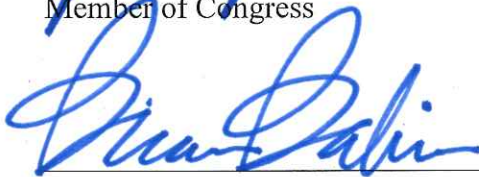
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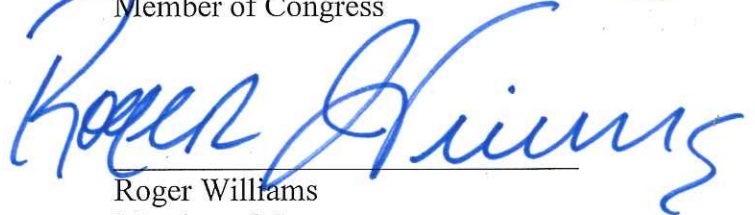
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<sup>4</sup> <https://www.congress.gov/bill/113th-congress/house-resolution/676/text>

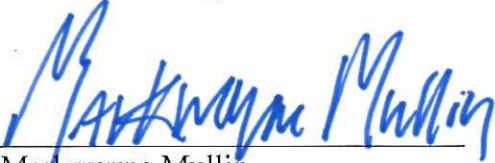




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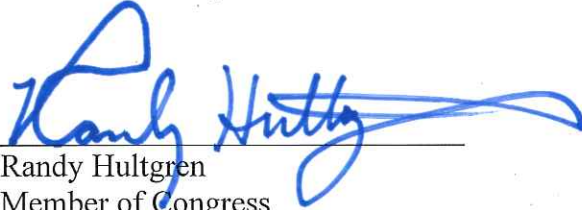
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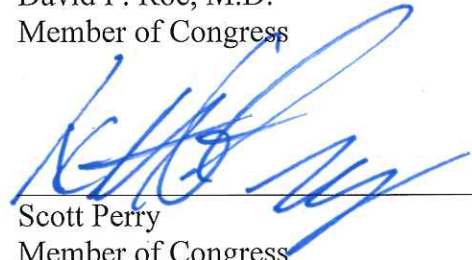
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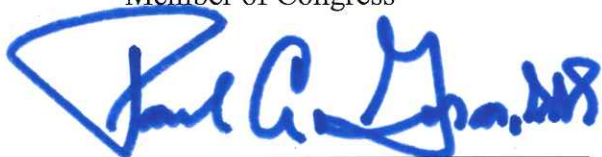
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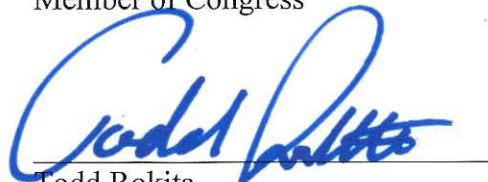
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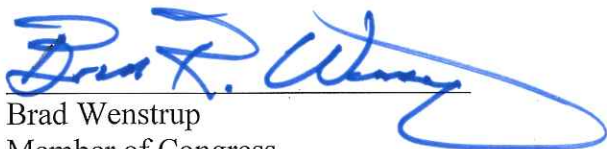
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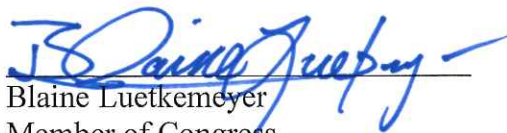
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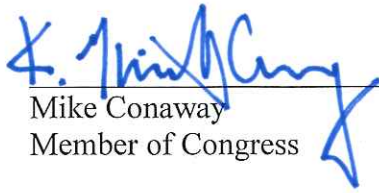
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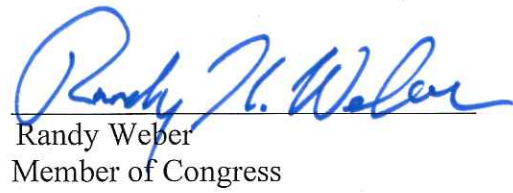


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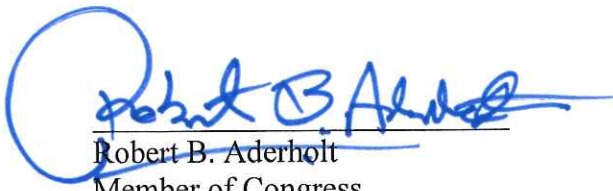
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