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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

September 5, 2014

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The Honorable Gene L. Dodaro
Comptroller General of the United States
441 G Street NW
Room 7100
Washington, DC 20548

Dear General Dodaro,

I am writing to raise concerns about the Department of Health and Human Services (HHS) General Counsel's (GC) letter, dated May 20, 2014 (Schultz letter) related to the "risk corridors" program created under section 1342 of P.L. 111-148. This program requires qualified health insurance plans to participate in a payment adjustment system that re-distributes premiums. In the Schultz letter, to Mrs. Matta, the Assistant General Counsel for Appropriations Law in the U.S. Government Accountability Office, Mr. Schultz makes what we believe are inaccurate and inconsistent statements compared to what HHS has described in meetings with senior Appropriations Committee staff and various HHS budget documents themselves related to the "risk corridors" program.

First, HHS's fiscal year 2015 Budget in Brief (page 102) and Centers for Medicare and Medicaid's (CMS) congressional justification (page 16) specifically identify what the Department considers to be "user fees," and the "risk corridors" program is not identified as a "user fee." The "risk corridors" are clearly defined in P.L. 111-48, section 1342 as a "payment adjustment system" and do not meet the commonly understood definitions of a user fee. There are no goods or services provided by the federal government in exchange for these payments, they are merely a system of income redistribution. The budget documents further describe the "risk corridors" program in the CMS Program Management account as "outlays." It is also my understanding that during bi-cameral, bi-partisan in-person briefings with Committee staff, senior HHS budget officials clearly stated that the risk corridors were not user fees.

Most troubling, the Schultz letter improperly concludes that since the "risk corridor" payment adjustments are "user fees", they believe that the CMS Program Management account has legal authority to perform this redistribution based on current appropriations law. Although the annual appropriations law does provide the CMS Program Management account authority to collect and use user fees, it is explicitly limited to "authorized" user fees. The intent is limited to those "user fees" proposed in the annual congressional budget justification. Since no budget request clearly identifies the "risk corridors" program as user fees, the existing bill language under the CMS Program Management

account lacks the proper authorities to operate this program as denoted by the specific types of offsetting collections allowed in bill language.

In light of these serious concerns and their implications, I request that you take comments under advisement in any review related to the "risk corridors" program. Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jack Kingston". The signature is fluid and cursive, with the first name "Jack" and last name "Kingston" clearly legible.

Jack Kingston
Chairman, Subcommittee on Labor Health and
Human Services, Education and related Agencies