CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Keith Hall, Director

June 8, 2018

Honorable Mark Meadows
U.S. House of Representatives
Washington, DC 20515

Re: The Budgetary Treatment of Cost-Sharing Reductions

Dear Congressman:

In a May 25, 2018, letter, you asked a number of questions about cost-sharing reductions (CSRs) and their budgetary treatment. That letter conveyed your concerns about the consistency of my and the Congressional Budget Office's handling of the topic, particularly during a hearing before the House Budget Committee on January 30, 2018, and about what influenced our decisionmaking. I hope that this letter and the answers to your questions in the attachment allay your concerns.

Cost-Sharing Reductions

Insurers who participate in the marketplaces established under the Affordable Care Act (ACA) are required to offer CSRs to eligible people. CSRs decrease deductibles and other out-of-pocket expenses like copayments. To qualify for CSRs, people must generally purchase a silver plan through a marketplace and have income between 100 percent and 250 percent of the federal poverty guidelines (also known as the federal poverty level).[1]

Before October 12, 2017, the federal government reimbursed insurers for the costs of CSRs through direct payments. However, on that date, the Administration announced that, without an appropriation for that purpose, it would no longer make such payments to insurers. Because insurers are still required to offer CSRs and to bear their costs even without direct payments from the government, most have covered those costs by increasing premiums for silver plans offered through the marketplaces for the 2018 plan year, and CBO expects all insurers to do so beginning in 2019.

[1] For additional information about CSRs, see Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to* 2028 (May 2018), pp. 8–9, www.cbo.gov/publication/53826.

Budgetary Treatment of CSRs

For the spring 2018 baseline, CBO and the staff of the Joint Committee on Taxation (JCT) project that the entitlement for subsidies for CSRs is being funded through higher premiums and larger tax credits based on those premiums instead of through direct payments. The projections reflect the way insurers are currently reimbursed for the costs of providing CSRs to eligible enrollees in light of the Administration's change in policy. That change took two key considerations into account:

- CBO has long viewed the requirement that the federal government compensate insurers for CSRs as a form of entitlement authority.

- The Balanced Budget and Emergency Deficit Control Act specifies that, in the baseline, funding for entitlement authority should be "assumed to be adequate to make all payments required" by law.

With the federal government no longer reimbursing insurers for the costs of CSRs through direct payments, CBO has continued to treat CSRs as an entitlement and considered two approaches for doing so in its spring 2018 baseline projections:

- Under the first approach, CBO would keep projecting the direct payments for CSRs and project premiums, enrollment, and government subsidies in the marketplaces as if insurers had not raised their premiums to cover the costs of CSRs. Such projections would not match actual 2018 premiums in the marketplaces. Moreover, the approach would lead to projections of subsidies that were too low, resulting in less accurate cost estimates for proposed legislation.

- Alternatively, CBO would align its baseline projections for 2018 to actual premiums in the marketplaces and cease projecting the direct payments for CSRs. Under the second approach, CBO's projections of premiums, enrollment, and government subsidies in the marketplaces would reflect what is actually happening now—namely, that most insurers have covered the costs of CSRs by increasing premiums for silver plans offered through the marketplaces for the 2018 plan year. Those projections also would reflect CBO's expectation that, in the absence of direct payments for CSRs, they will be funded through premium tax credits in the future.

After following its normal procedures for consultation with the House and Senate Budget Committees, CBO used the second approach. That approach allows the baseline projections to more accurately reflect what is happening in insurance markets. It also will make cost estimates for legislation more useful to the Congress because the approach reflects the reality that the costs of CSRs are being incorporated into premiums and into payments of premium tax credits.

If legislation was proposed to appropriate funding for CSRs, what would change is the method of paying for the entitlement; the underlying requirement for payment exists regardless of method. On that basis, after consulting with the budget committees about the baseline and about cost estimates relative to that baseline, a cost estimate for such legislation will show no effects on direct spending or revenues. That approach would continue the practice used in past cost estimates for legislation proposing to appropriate funding for CSRs. If such a proposal was enacted, CBO would update its baseline projections to incorporate those appropriations and reflect what was expected to happen under that new law.

CBO's process for determining the budgetary treatment of CSRs followed the normal procedures for addressing questions regarding the baseline and cost estimates for legislation. Please contact me directly if I can provide further assistance.

Sincerely,

Keith Hall
Director

Attachment

cc: Honorable Steve Womack
Chairman
House Committee on the Budget

Honorable John Yarmuth
Ranking Member
House Committee on the Budget

Answers to Questions Asked on May 25, 2018, by Congressman Meadows

Question. When did CBO first consider changing the budgetary treatment of cost-sharing reductions from assuming direct payments to assuming indirect payments?

Answer. The Congressional Budget Office discussed the issues involved with the budgetary treatment of cost-sharing reductions (CSRs) with the budget committees soon after the Administration ceased making CSR payments in October 2017. Those discussions continued for months—beginning before the House Budget Committee's hearing at the end of January 2018 where Director Hall first discussed the issues publicly and continuing afterward—during which time CBO observed how the government's operations and insurance markets adapted and how CSRs were being funded through premium tax credits. That consultation culminated with a blog post on May 3, 2018, in which Director Hall described in detail how CBO was handling CSRs.[1]

Question. If CBO was considering such a change to the budgetary treatment of CSRs at the time of the House Budget Committee's January 30 hearing, why did you not disclose this fact in response to multiple direct questions regarding it?

Answer. During the hearing, Director Hall explained that CBO would continue to treat CSRs as an entitlement—that, in the agency's projections, beneficiaries would continue to receive CSRs. When he noted that CBO was "assuming essentially that the money will be found *somewhere* because it's an entitlement," his statement was intended to indicate that the agency was in the process of figuring out where the money would come from to fund the entitlement, but the source was not yet clear. That statement was consistent with the notion that funding for CSRs would be provided either through direct appropriation or through tax credits.

Congressman Brat asked questions at the hearing about scoring—that is, estimation of effects of legislation on the deficit. CBO has not changed its procedure for estimating the effects of legislation that would appropriate funding for payments to cover the costs of providing CSRs.

Question. Why has CBO mischaracterized its mandate in Section 257(b)(1) of the Balanced Budget and Emergency Deficit Control Act?

Answer. The Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) specifies that the baseline incorporate the assumption that funding for entitlement authority is adequate to make all payments required by laws providing or creating direct spending and receipts. CBO's budgetary treatment of CSRs in its baseline is consistent with the specifications of BBEDCA for two main reasons.

[1] See Keith Hall, "Cost-Sharing Reductions in CBO's Spring 2018 Baseline" *CBO Blog* (May 3, 2018), www.cbo.gov/publication/53799.

- Under BBEDCA, the baseline should reflect the payments required by the law as a whole. The Affordable Care Act (ACA) directs the payment of CSRs (section 1402), requires that premium tax credits be allowed (section 1401), and instructs that payments be made to insurers for both CSRs and premium tax credits (section 1412). Although the Administration ceased making direct CSR payments to insurers, the remaining requirements related to premium tax credits (in sections 1401 and 1412) continued to operate. Given the cessation of direct payments, it was unclear how those statutory requirements would be fulfilled, making how they were implemented even more relevant to the baseline. To reflect all payments required by the law as a whole, the baseline should account for CSR payments once; in practice, they are being funded through premium tax credits.

- Funding through premium tax credits is projected to be adequate to make all payments required to provide the CSRs to which beneficiaries are entitled under the law. BBEDCA does not specify how required payments should be accounted for in the baseline. In CBO's spring 2018 baseline, CSRs are projected to be funded through premium tax credits because they are the means by which the agency expects insurers' costs for CSRs will be recouped. That approach embodies what is currently happening in the marketplaces.

Question. How can CBO claim it followed its statutory requirement to assume that funding is "adequate to make all payments required" with respect to CSRs?

Answer. In CBO's projections, beneficiaries receive the CSRs to which they are entitled, and the government provides funding for them. Thus, those projections fulfill the statutory requirement to assume that funding is adequate to make all payments required. The means of funding need not be limited to direct payments to insurers; rather, the funding is provided through premium tax credits in the projections—reflecting how the funding is actually being provided.

Question. How does CBO's revised budgetary treatment of CSRs comply with the statutory requirement that falls upon the Secretary of Health and Human Services —and not the Secretary of the Treasury—to reimburse insurers for CSRs?

Answer. CBO's budgetary treatment of CSRs takes into account the shared responsibilities for implementation that the ACA gives to the Secretaries of Health and Human Services and the Treasury and to other relevant agencies. In CBO's spring 2018 baseline, beneficiaries are projected to receive the CSRs to which they are entitled, just as they have been in all of the agency's baselines since those subsidies were enacted. In the most recent projections, what has changed is the way insurers are paid for CSRs. In the baseline, instead of excluding the costs of CSRs from premiums and notifying the Secretary of Health and Human Services of those costs to receive reimbursement, insurers are projected to cover the costs of CSRs through their premiums. People receive federal subsidies in the form of tax credits linked to premiums; those tax credits are paid by the Secretary of the Treasury.

CBO's baseline incorporates the assumption that the federal government operates in the manner specified in the law, which means reflecting the ways in which agencies are actually carrying out the law now or are expected to do so in the future. The baseline also incorporates CBO's projections of expected behavior by people, insurers, and other entities in response to the changes in the costs of providing marketplace coverage expected to arise from those operations. Those projections are incorporated into estimates of the costs to the federal government.[2] In the case of CSRs, CBO has not transferred requirements from one Secretary to another. Rather, in accordance with its statutory obligations, the agency has projected the effects of government actions on the budget.

Question. In the more than 30 years since BBEDCA's passage, does any precedent exist where CBO or the Office of Management and Budget have treated entitlement funding through indirect, as opposed to direct, payments?

Answer. The situation in which the means of funding an entitlement has changed from a direct payment to a tax credit has not arisen previously. Generally, when new facts give rise to questions about how or what should be incorporated into the baseline, CBO consults the budget committees.

In other situations when the source of funding has been at issue, CBO has projected that entitlement payments to beneficiaries may come from sources other than those specified in law. For example, as specified in BBEDCA, Social Security benefits are projected to be paid as scheduled in CBO's baseline despite the fact that Social Security's trust funds are not projected to have sufficient funding to pay for those benefits. The source of that funding outside of the trust funds is not specified in law.

Question. How can CBO both attribute premium increases and the lack of premium increases to covering the cost associated with the loss of direct CSR payments?

Answer. CBO generally expects the costs associated with CSRs to be covered by increases in premiums. However, CSRs are only one of many market forces changing from year to year, and the net effect of all of those factors may cause premiums to flatten out or decrease for a particular insurer in a particular year. In such a case, the decrease would not be as large as it would have been if the direct payments for CSRs were still being made. In cases involving premium decreases or small increases, CBO concluded that the premiums covered the costs of CSRs on the basis of specific information provided by insurers and regulators.

[2] If, for example, a law stated that "all eligible people shall apply for this benefit," CBO's baseline would incorporate the agency's projection of the number of people who would actually apply. That approach would provide more accurate information about the law's budgetary effects than if the baseline incorporated a counterfactual assumption that all eligible people would apply for the benefit.

Question. Did any insurers in states where regulators did not allow them to adjust 2018 premiums to account for the lack of direct CSR payments decrease premiums?

Answer. On the basis of information from the National Association of Insurance Commissioners, The Commonwealth Fund, insurers, and state regulators, CBO found that regulators in at least 47 states and the District of Columbia allowed insurers to adjust 2018 premiums to account for the lack of direct payments for CSRs. In South Dakota, North Dakota, and Vermont, CBO either found that regulators did not allow such increases in 2018 or has received conflicting information about regulators' actions. According to publicly available information about premiums, a very small number of plans in those states decreased premiums from 2017 to 2018 for the same product. Such decreases were small, and CBO estimates that they were the net effect of many factors that change from year to year.

Question. Did CBO assume that insurers have willfully violated directives from state insurance commissioners by raising insurance premiums to account for the lack of direct CSR payments after their regulators explicitly instructed them not to do so?

Answer. In September 2017, before the Administration's decision the following month to stop making direct payments for CSRs, CBO wrote, "The agencies [CBO and the staff of the Joint Committee on Taxation] expect insurers to raise premiums for marketplace plans in 2018 by an average of roughly 15 percent, largely because of uncertainty about whether the federal government will continue to fund CSR payments and because of an increase in the percentage of the population living in areas with only one insurer."[3] Those projections did not specify particular insurers making increases for specific reasons. Instead, CBO projected that general uncertainty about CSRs would cause insurers, when they decided in 2017 about premiums for plan year 2018, to set them near the high end of a reasonable range. In its spring 2018 baseline, CBO continued to attribute some of the increase in premiums between 2017 and 2018 to uncertainty about CSRs at the time premiums were being set.

Question. Which insurers did CBO contact regarding the 2018 filings and CSRs referenced in footnote 2 of Box 1 of the May 23, 2018 report and when did CBO do so?

Answer. CBO used information provided by the National Association of Insurance Commissioners and information from states and insurance regulators that was published by The Commonwealth Fund.[4] Other information was provided by insurers as part of their public rate filings.[5] As part of the regular process of projecting annual changes in premiums paid, CBO

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[3] See Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2017 to 2027* (September 2017), p. 7, www.cbo.gov/publication/53091.

[4] See Sabrina Corlette, Kevin Lucia, and Maanasa Kona, "States Step Up to Protect Consumers in Wake of Cuts to ACA Cost-Sharing Reduction Payments," *To the Point* (blog entry, October 27, 2017), http://tinyurl.com/y728ro2y.

[5] See Healthcare.gov, "Rate Review" (accessed most recently on June 8, 2018), https://ratereview.healthcare.gov; and National Association for Insurance Commissioners, "System for Electronic Rates & Forms Filing" (accessed most recently on June 8, 2018), www.serff.com.

accessed that information throughout the period between when it became available in 2017 and the publication of the agency's report in May 2018. CBO also discussed the 2018 filings with some insurers and state regulators during that period; those insurers and regulators provided information on the basis of assurances that their contact with CBO and the information they provided would remain confidential.

Question. Absent any explicit direction to do so from the House and Senate Budget Committees, what factors prompted CBO to change the budgetary treatment of CSRs?

Answer. CBO has not changed its procedure for estimating how legislation that would appropriate funding for the payments to cover the costs of providing CSRs would affect the federal deficit. A cost estimate for legislation that appropriated such funding—as the Bipartisan Health Care Stabilization Act, for example, would have done—would not show an effect on direct spending or revenues from that appropriation.[6]

What the agency has changed, after consultation with the budget committees, is its treatment of CSRs in its baseline projections. CBO regularly reassesses its baseline projections in the course of making comprehensive updates that underlie its cost estimates for the coming year, and it did so again this year. The change adheres to the procedures governing the baseline, incorporating the assumptions that beneficiaries receive the CSRs to which they are entitled and that the government provides funding for them. The span between the Administration's announcement about CSRs and CBO's spring baseline provided time to observe how the government's operations and insurance markets adapted and to consult with the budget committees.

The change makes the baseline projections more accurate, and cost estimates for legislation not involving appropriations for CSRs more useful to the Congress. In reality, the costs of CSRs are being incorporated into premiums and into premium tax credit amounts in 2018, and CBO projects that will continue in later years unless funding for CSRs is directly appropriated. If the baseline incorporated an assumption that payments for CSRs were made directly, projected premiums and premium tax credits would consequently be lower, distorting CBO's estimates of deficits under current law and of the effects of legislative proposals.

Question. Apart from CBO's consultations with the House and Senate Budget Committees, did any other Congressional offices or entities encourage CBO to change the budgetary treatment of CSRs? If so, which offices?

Answer. CBO respects the principle of comity (the reciprocal courtesy between Members) to protect all communications with Members. Therefore, CBO does not disclose communications between the agency and Members of Congress or their staff. That principle is integral to the agency's ability to provide technical information as legislation is being developed.

[6] See Congressional Budget Office, cost estimate for the Bipartisan Health Care Stabilization Act of 2018 (March 19, 2018), www.cbo.gov/publication/53666.