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

Keith Hall, Director

July 20, 2018

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

Re: Follow-Up About the Budgetary Treatment of Cost-Sharing Reductions

Dear Congressman:

In a July 2, 2018, letter, you asked additional questions following my response to your earlier questions about the budgetary treatment of payments for cost-sharing reductions (CSRs) provided by insurers in the marketplaces established under the Affordable Care Act. I hope this letter answers your remaining questions and addresses any continuing concerns you may have.

Background

Insurers that participate in the marketplaces established under the Affordable Care Act are required to offer CSRs to eligible people. CSRs reduce deductibles and other out-of-pocket expenses like copayments. Before October 12, 2017, the federal government reimbursed insurers for the costs of CSRs through direct payments. Those payments have now been terminated, and the subsidies for the CSRs are instead being funded through higher premiums and larger tax credits based on those premiums. As discussed in my previous letter, for the spring 2018 baseline, the Congressional Budget Office and the staff of the Joint Committee on Taxation (JCT) project that the entitlement for subsidies for CSRs will continue to be funded that way.[1]

The Administration's October 12, 2017, announcement that it would no longer make CSR payments directly to insurers without an appropriation for that purpose caused CBO to consider three related questions:

(1) Should reimbursement for the CSRs still be considered an entitlement absent direct payments?

[1] See Congressional Budget Office, letter to the Honorable Mark Meadows regarding the budgetary treatment of cost-sharing reductions (June 8, 2018), www.cbo.gov/publication/53961.

(2) If so, how should the funding for the entitlement be reflected in the baseline?

(3) Should there be a change to the approach for estimating the budgetary impact of legislation appropriating funding for CSRs?

When facing complex issues involving budget rules and procedures and determining how to proceed, CBO routinely consults with the House and Senate Committees on the Budget. So in addressing those questions, CBO consulted extensively with the staff of the budget committees.

Considering Compensation for CSRs to Be an Entitlement

By the end of 2017, CBO determined that the requirement that the federal government compensate insurers for CSRs should continue to be viewed as a form of entitlement authority and, as a result, that the baseline should project funding that is adequate to make all required payments, as specified by the Balanced Budget and Emergency Deficit Control Act. That determination was discussed in the January 30, 2018, hearing before the House Budget Committee.[2]

Reflecting the Funding for the Entitlement in the Baseline

Between October 2017 and early 2018, CBO observed how the government's operations and insurance markets adapted to the termination of direct payments and how CSRs were being funded through premium tax credits. With that knowledge, in early 2018, CBO considered two approaches for reflecting the CSR entitlement in the baseline.

Under one approach, CBO would keep projecting the direct payments for CSRs (even though no such payments were being made) and project premiums, enrollment, and government subsidies in the marketplaces as if insurers had not raised their premiums to cover the costs of CSRs.

Under the other approach, CBO would align its baseline projections for 2018 to actual premiums in the marketplaces and cease projecting the direct payments for CSRs. That approach would reflect what was actually happening and has continued to happen—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 the direct payments, CSRs will continue to be funded through premium tax credits in the future.

In March 2018, CBO decided on the second approach for the baseline. That approach allows the baseline projections to more accurately reflect what is

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[2] See testimony of Keith Hall, Director, Congressional Budget Office, before the House Budget Committee, *The Congressional Budget Office's Work in 2017 and Plans for the Future* (January 30, 2018), www.cbo.gov/publication/53501.

happening in insurance markets. After reporting the baseline projections in April, CBO described the treatment of CSRs in detail in a blog post on May 3, 2018.[3]

Estimating the Budgetary Impact of Legislation Appropriating Funding for CSRs

As CBO considered the two approaches for reflecting the CSR entitlement in the baseline, it also assessed how the budgetary effects of legislation appropriating funding for CSR payments should be estimated under each approach. After additional consultation with the House and Senate Budget Committees, CBO determined that it would estimate the same budgetary impact under either approach because such legislation would change the method of paying for the entitlement but not the underlying requirement for payment (that is, the underlying entitlement is the same regardless of the funding approach). On that basis, a cost estimate for legislation that would appropriate funding for CSRs will show no effects on direct spending or revenues. That outcome is consistent with cost estimates produced throughout 2017.

Answers to Specific Questions

In your letter, you asked, *At the time of your January 30, 2018, testimony before the House Budget Committee, was CBO considering the change to the way it treated CSR payments as an entitlement—yes or no?* You also asked, *If the answer [to that question] is yes, please identify the section of your testimony where you disclosed this fact in response to Member queries about CSRs.*

Before the January 30, 2018, testimony and after consultation with the House and Senate Budget Committees, CBO had determined that CSRs should continue to be viewed as a form of entitlement authority. I mentioned that approach in responses to questions from Representative Brat and Representative Schakowsky.

CBO was, however, in the process of figuring out the best way to show the CSR entitlement in the baseline, given the Administration's change in policy. CBO knew that the CSR entitlement was being funded through adjustments to premiums and related premium tax credits, but the agency was still in the process of discussing how best to reflect that fact in its projections. When I said that "the money will be found somewhere" to fund the entitlement, I was attempting to convey that it was not yet clear how that fact would be reflected. In retrospect, it might have been helpful if I had been more explicit about what the options were for finding the money "somewhere."

[3] See Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028* (April 2108), www.cbo.gov/publication/53651; and Keith Hall, "Cost-Sharing Reductions in CBO's Spring 2018 Baseline," *CBO Blog* (May 3, 2018), www.cbo.gov/publication/53799.

Subsequently, CBO explained the issues at length in the May 2018 blog post and in a publication about federal subsidies for health insurance.[4] Throughout the period, CBO followed its normal procedures for updating the baseline and communicating with the budget committees about notable changes.

You asked, *Are you aware of any case prior to CSRs when CBO altered the budgetary treatment of a program without altering the scoring treatment of same?*

CBO is not aware of any similar situation that would serve as a useful precedent for this one—in which, in the absence of a legislative change, the payments for an entitlement shifted from one source of funding to another on an ongoing basis as a result of an administrative action and the response of private-sector entities. In cases in which CBO lacks clear precedent for guidance, it consults with the budget committees and has internal discussions in an attempt to find the most appropriate budgetary treatment.

Ultimately, CBO decided to record the CSR entitlement in the baseline in a way that reflected the reality of higher premium tax credits. Although shifting the treatment of CSRs in the baseline more accurately reflected reality, it complicated matters from a cost-estimating perspective because the costs of the different methods of paying for the entitlement would not be identical. CBO estimates that funding through premium tax credits is more costly than providing a direct appropriation. Nevertheless, in cost estimates for any legislation that would provide direct appropriations for CSRs, CBO will continue to estimate no budgetary effect—as it has in cost estimates over the past year (like those for the Bipartisan Health Care Stabilization Act)—because the underlying entitlement would be unchanged.[5]

Basing a cost estimate on the essence of the underlying transactions, rather than on the technicalities of budgetary accounting, is not unique. For example, CBO estimates direct spending costs for bills that would authorize the federal government to enter into certain types of long-term leases, even though the lease payments would appear in discretionary budget accounts.[6] Because those transactions are essentially governmental purchases, the full costs of acquiring the facilities are shown up front in CBO's cost estimate, rather than as annual payments spread out over the term of the lease.

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[4] See Congressional Budget Office, *Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2028* (May 2018), www.cbo.gov/publication/53826.

[5] See Congressional Budget Office, cost estimate for the Bipartisan Health Care Stabilization Act of 2018 (March 19, 2018), www.cbo.gov/publication/53666, and cost estimate for the Bipartisan Health Care Stabilization Act of 2017 (October 25, 2017), www.cbo.gov/publication/53232.

[6] See testimony of Robert A. Sunshine, Deputy Director, Congressional Budget Office, before the House Committee on Veterans' Affairs, *The Budgetary Treatment of Medical Facility Leases by the Department of Veterans Affairs* (June 27, 2013), www.cbo.gov/publication/44368.

There are also other situations in which budgetary effects shown in cost estimates do not match anticipated changes in the baseline. For example, under Congressional scorekeeping guidelines, the potential savings from proposals to provide additional funding for certain activities such as antifraud efforts are not included in a cost estimate's analysis of changes in federal deficits, which is used for budget enforcement purposes.[7] The applicable rules were established in large part to avoid crediting uncertain potential savings as an offset to very certain up-front spending. However, once that proposal is enacted, CBO incorporates its best estimate of those effects into its baseline projections.

You also asked, *At any point prior to the April 9, 2018, release of the updated* Budget and Economic Outlook, *did anyone ask or instruct you or your staff not to disclose in a public setting (such as the January 30, 2018, hearing of the House Budget Committee) that CBO was considering changes to the way it treated CSR payments as an entitlement?* No.

I hope you find this information useful. I would welcome the opportunity to discuss with you in person these questions and others that may concern you.

Sincerely,

Keith Hall
Director

cc: Honorable Steve Womack
Chairman
House Committee on the Budget

Honorable John Yarmuth
Ranking Member
House Committee on the Budget

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[7] See Congressional Budget Office, *How Initiatives to Reduce Fraud in Federal Health Care Programs Affect the Budget* (October 2014), p. 9, www.cbo.gov/publication/49460.