Congressional Budget Office

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Answers to Questions for the Record Following a Hearing Conducted by the House Committee on the Budget on *The Budget and Economic Outlook: 2018 to 2028*

On April 12, 2018, the House Committee on the Budget convened a hearing at which Keith Hall, Director of the Congressional Budget Office, testified about The Budget and Economic Outlook: 2018 to 2028.[1] *After the hearing, Congressman Palmer submitted questions for the record. This document provides CBO's answers. It is available at www.cbo.gov/publication/54206.*

Question. How is CBO's new decision to assume funding for cost-sharing reductions (CSRs) "through higher premiums and larger premium tax credit subsidies rather than through a direct appropriation" consistent with Section 257(b)(1) of the Balanced Budget and Emergency Deficit Control Act (BBEDCA), which states that under the budgetary baseline, "funding for entitlement authority is assumed to be adequate to make all payments required" by law? How is any potential assumption that Congress will NOT appropriate CSR funds directly consistent with the requirement of Section 257(b)(1) of BBEDCA to assume funding to "make *all* payments?"

Answer. CBO's treatment in the baseline of payments for CSRs both reflects the reality of how the CSRs are being funded and is consistent with the requirements of BBEDCA.

Background. Insurers that 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).[2]

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. See testimony of Keith Hall, Director, Congressional Budget Office, before the House Committee on the Budget, *The Budget and Economic Outlook: 2018 to 2028* (April 12, 2018), www.cbo.gov/publication/53722.

2. For additional information about CSRs and their budgetary treatment, 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, and letter to the Honorable Mark Meadows regarding the budgetary treatment of cost-sharing reductions (June 8, 2018), www.cbo.gov/publication/53961.

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 budgetary treatment 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.
- BBEDCA 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 (which are not 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. 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.

The Consistency of CBO's Treatment of CSRs With BBEDCA's Requirements. 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.

- Under BBEDCA, the baseline should reflect the payments required by the law as a whole. The ACA directs insurers to provide CSRs and provides that the government reimburse insurers for them (section 1402), requires that taxpayers be allowed to claim premium tax credits (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 in effect. 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 the federal government fund CSRs through "larger premium tax credit subsidies" as well as a direct appropriation? Does CBO's new treatment of CSRs assume that Congress will not make a direct appropriation for CSRs?

Answer. To reflect all payments required by the law as a whole, the baseline should account for CSR payments once. In CBO's previous baselines, CSRs were funded through direct payments because that was what was occurring. In the current baseline, they are funded through larger premium tax credit subsidies, which is what is occurring now.

However, if legislation was enacted that appropriated funds for direct payments for CSRs, the agency would update its baseline projections to incorporate those appropriations and to lower its projections of premium tax credits and other effects—because insurers would no longer increase gross premiums for silver plans offered through the marketplaces to cover the costs of providing CSRs.

Question. Please name any other programs, past or present, for which CBO has scored entitlement authority for the purposes of Section 257(b)(1) of BBEDCA as coming from indirect, as opposed to direct, payments.

Answer. The situation in which the means of funding an entitlement has changed from a direct appropriation to a tax credit has not arisen previously.

In some 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. Please explain any and all actions CBO has taken to reconcile the discrepancy of the baseline treatment of CSRs with OMB officials.

Answer. CBO has discussed the issues with staff from the Office of Management and Budget (OMB). The two agencies have come to a different conclusion about the baseline treatment. Such differences occur occasionally. For example, CBO and OMB have treated Fannie Mae and Freddie Mac differently in the baseline since those enterprises entered conservatorship in 2008.

Question. Did CBO obtain legal advice from its General Counsel regarding the legality of changing the budgetary treatment of CSRs, and whether the change complies with

Section 257(b)(1) of BBEDCA? When did it obtain any legal advice regarding the budgetary treatment of CSRs—before or after Director Hall's comments at the January 30 House Budget Committee hearing on "CBO Oversight: Organizational and Operational Structure" that CBO would not take action unless and until directed to do so by the Budget Committees?

Answer. CBO's internal discussions of the issues involved with the budgetary treatment of CSRs included its Office of General Counsel throughout. Those discussions began soon after the Administration ceased making CSR payments in October 2017 and continued for months—beginning before the hearing in January 2018 where Director Hall first discussed the issues publicly and continuing afterward.

Question. At the House Budget Committee's January 30 hearing on "CBO Oversight: Organizational and Operational Structure," you were asked whether CBO would score CSRs "as if [President Trump] is ending them or as if he's continuing them," to which you replied that "We've been treating it as an entitlement, so it's remained there—unless we get direction to do something different." From whom did CBO get "direction to do something different" in changing its baseline scoring assumptions subsequent to your comments? Subsequent to its October 25, 2017 estimate, did CBO engage in any consultations (either orally, in person, in writing, or via any form of electronic communication) with the Chairman of the House Budget Committee, or staff for the House Budget Committee, regarding the budgetary treatment of CSRs? Subsequent to its October 25, 2017 estimate, if CBO did not engage in any consultations (either orally, in person, in writing, or via any form of electronic communication) with the Chairman of the House Budget Committee, or staff for the House Budget Committee, please explain how failing to conduct such consultations—and then subsequently altering the baseline—is consistent with CBO's statement in its August 15, 2017 analysis that, should administrative action on CSRs occur, CBO would "consult with the Budget Committees to decide whether and how to reflect [administrative] action in the agency's baseline and cost estimates?" Subsequent to its October 25, 2017 estimate, did CBO engage in any consultations (either orally, in person, in writing, or via any form of electronic communication) with the Chairman of the Senate Budget Committee, or staff for the Senate Budget Committee, regarding the budgetary treatment of CSRs? Subsequent to its October 25, 2017 estimate, if CBO did not engage in any consultations (either orally, in person, in writing, or via any form of electronic communication) with the Chairman of the Senate Budget Committee, or staff for the Senate Budget Committee, please explain how failing to conduct such consultations—and then subsequently altering the baseline—is consistent with CBO's statement in its August 15, 2017 analysis that, should administrative action on CSRs occur, CBO would "consult with the Budget Committees to decide whether and how to reflect [administrative] action in the agency's baseline and cost estimates."

Answer. CBO did not get direction to change its treatment of compensation for CSRs as an entitlement and did not make such a change. CBO made the change to the projected source of funding for those payments following its normal procedures for consultation with the House and Senate Budget Committees.

CBO discussed the issues involved with the budgetary treatment of CSRs with both budget committees soon after the Administration ceased making CSR payments in October 2017. Those discussions continued for months—beginning before the hearing in 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.[3]

In addition, the question asked at the hearing was about scoring—that is, estimating the effects of legislation on the deficit. 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. Consequently, and after consulting with the budget committees about the baseline and about cost estimates relative to that baseline, CBO concluded that a cost estimate for such legislation would 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.

Question. In its October 25, 2017 estimate of the Bipartisan Health Care Stabilization Act, CBO stated that "after consultation with the Budget Committees, CBO has not changed its baseline to reflect the Administration's announcement on October 12, 2017 that it would stop making payments for CSRs." Why did the Budget and Economic Outlook contain no references to subsequent conversations with the Budget Committees regarding CBO's decision to change its scoring methodology?

Answer. In the *Outlook*, CBO described its estimates of spending for subsidies for coverage purchased through the marketplaces this way: "Those estimates are preliminary, and CBO will provide further details about them and their implications for future cost estimates in an upcoming report."[4] CBO believed that, because there was significant interest in the topic and the issues are somewhat complicated, they were best addressed in publications that focused on health insurance coverage. Those details were provided a few weeks later in the subsequent blog post and in a report.[5] Both publications mention CBO's consultations with the budget committees.

Question. In its August 15, 2017 analysis, CBO stated that eliminating CSRs would increase health insurance subsidy spending by a net of $194 billion. However, the line in Table A-1 of the Budget and Economic Outlook regarding Technical Changes to health insurance subsidies includes a net spending increase of only $44 billion? What accounts for this discrepancy? Did CBO also use the line in Table A-1 of the Budget and Economic Outlook regarding Technical Changes to health insurance subsidies to incorporate changes in behavioral assumptions related to the individual mandate, alluded to in CBO's November 2017 analysis regarding the mandate? If CBO did use the Technical Changes line to incorporate changes in assumptions regarding the individual mandate, please provide separate estimates for 1) behavioral changes regarding the mandate; 2) the impact of changes related to CBO's treatment of CSRs; and 3) any other component changes included in the $44 billion number in Table A-1.

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

4. See Congressional Budget Office, *The Budget and Economic Outlook: 2018 to 2028 (*April 2018), p. 103, www.cbo.gov/publication/53651.

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

Answer. In the *Outlook*, published in April, the increase in outlays of $44 billion over the 2018–2027 period reported in Table A-1 reflects the net effect of technical revisions to estimates of spending for subsidies for coverage purchased through the marketplaces established under the ACA and related spending between June 2017 and April 2018.[6] (That figure, capturing technical revisions, excludes a $206 billion reduction in such spending arising from incorporating CBO's estimates of the effects of legislative changes enacted during the same period.)

Two key technical revisions increased projections of outlays for marketplace subsidies and related spending. First, incorporating the reality that the costs of CSRs are being funded through higher premium tax credits stemming from higher gross premiums charged for silver plans offered through the marketplaces increased both the average amount of subsidy per person and the number of people receiving subsidies. Second, revised methods for estimating the effects of eliminating the penalty for not having health insurance diminished the estimated reduction in health insurance coverage and, therefore, increased the number of people projected to receive subsidies through the marketplaces.

Other technical revisions partially offset those increases in outlays for marketplace subsidies and related spending. In particular, administrative data indicated that subsidized enrollment through the marketplaces in 2018 was lower than CBO and JCT had estimated in June 2017—causing the agencies to lower their estimates of subsidized enrollment in all years of the projection period.

CBO and JCT projected the effects of all of the components of the technical changes affecting health insurance subsidies simultaneously and have not prepared separate estimates of the effects of the components individually. Such estimates would depend upon the order in which the components were considered. Other analytical priorities, including development of a new version of CBO's health insurance simulation model over the next year, currently preclude such an undertaking.[7]

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6. Related spending includes spending for the Basic Health Program and spending to stabilize premiums for health insurance purchased by individuals and small employers. The $44 billion increase excludes the effect of technical revisions on the portion of marketplace subsidies that are classified as revenues.

7. For information about the development of that model, see Jessica Banthin and Alexandra Minicozzi, Congressional Budget Office, "Updating CBO's Health Insurance Simulation Model (HISIM)" (presentation at the Bipartisan Policy Center, Washington, D.C., June 19, 2018), www.cbo.gov/publication/54063.