



**U.S. Department of Justice**  
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March 20, 2018

Mr. Peter R. Marksteiner  
Clerk of Court  
United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, NW  
Washington, DC 20439

RE: *Maine Community Health Options v. United States*,  
No. 17-2395 (Fed. Cir.)

Dear Mr. Marksteiner:

This appeal presents the same legal issue as two companion cases in which this Court heard oral argument on January 10, 2018: *Land of Lincoln Mutual Health Ins. v. United States*, No. 17-1224 (Fed. Cir.), and *Moda Health Plan, Inc. v. United States*, No. 17-1994 (Fed. Cir.). The docket indicates that this appeal has been designated as related to the *Land of Lincoln* and *Moda* appeals.

By letter dated March 16, 2018, plaintiff called the Court's attention to a February 12, 2018 budget document prepared by HHS. The plaintiffs in *Land of Lincoln* and *Moda* previously called the same budget document to the Court's attention, and the government informed the Court that the document had since been revised. More fundamentally, the government explained the agency's accounting methodology has no bearing on the legal issue before the Court. The Appropriations Clause operates as a restraint on the Executive Branch, which cannot create a payment obligation that Congress did not authorize. *OPM v. Richmond*, 496 U.S. 414 (1990). Accordingly, “[i]f a given transaction is not sufficient to constitute a valid obligation, recording it will not make it one.” GAO, *Principles of Federal Appropriations Law* (Vol. II) at 7-8 (3d ed. 2004).

Sincerely,

s/ Alisa B. Klein

Alisa B. Klein, Attorney

cc: All counsel (via CM/ECF)