

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

COMMON GROUND HEALTHCARE  
COOPERATIVE,

Plaintiff,  
on behalf of itself and all others  
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-MMS  
(Judge Sweeney)

**PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S  
RENEWED, UNOPPOSED MOTION FOR APPROVAL OF NOTICE PLAN**

Pursuant to the Court’s order (Dkt. No. 17) granting class certification as to the Risk Corridors Class (the “Class”) and its subsequent denial without prejudice of Plaintiff Common Ground Healthcare Cooperative’s (“Plaintiff”) motion for approval of notice plan (Dkt. 23), Plaintiff submits this renewed motion for approval of its notice plan, which has been amended as set forth below. Defendant the United States of America (“Defendant”) provided potential Class members’ contact information to Class Counsel on January 30, 2018 and has no objections to this motion. With the Court’s approval, Class Counsel is prepared to begin the notice and class opt-in process along the lines described in the previously-submitted Keough Declaration (Dkt. 19-2) and via the amended notice attached to this motion.

The amended notice is attached in clean format as **Exhibit A** hereto, and with redlined revisions as **Exhibit B** hereto. Those changes to the proposed notice reflect three categories of revisions:

1. Edits to reflect the Court’s instructions in its January 29, 2018 Order;
2. Edits Defendant requested in discussions regarding the notice’s contents (specifically, edits to the first full paragraph on page 3, *i.e.*, the second paragraph of Section I.2 of the notice, which describe the money damages Plaintiff and the Risk Corridors Class seek by referencing the statute’s “payments out” and “payments in” terminology); and
3. Different contact information for the class administrator than what was previously used in the *Health Republic* class action, so that the administrator may better keep track of the circumstances under which it is contacted by QHP issuers with risk corridors-related questions.

Based on these revisions, Plaintiff respectfully requests that the Court grant this renewed,

unopposed motion and permit it and the class administrator to begin the class opt-in process on the schedule the Court sets.

DATED: February 1, 2018

Respectfully submitted,

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

*s/ Stephen Wedlow*

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Attorneys for Plaintiff Common Ground  
Healthcare Cooperative and the Class

**CERTIFICATE OF SERVICE**

I certify that on February 1, 2018, a copy of the attached **PLAINTIFF COMMON GROUND HEALTHCARE COOPERATIVE'S RENEWED, UNOPPOSED MOTION FOR APPROVAL OF NOTICE PLAN** was served via the Court's CM/ECF system on all counsel of record.

*s/ Stephen Swedlow*  
Stephen Swedlow

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**If you offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and your allowable costs were more than 103 percent of your target amounts, you may opt-in to join a lawsuit.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**THIS NOTICE MAY AFFECT YOUR RIGHTS; PLEASE READ CAREFULLY.**

**TO:** All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), excluding the Defendant (United States) and its members, agencies, divisions, departments, and employees.

- This legal notice has been sent to you by order of a federal court. Please read this Notice carefully and fully. It tells you about the opportunity you now have to join a class action lawsuit that is currently pending before the court.
- The Court is neither encouraging nor discouraging individuals from joining this lawsuit. This notice is intended to advise you of the *Common Ground Healthcare Cooperative v. United States* risk corridors litigation and of your rights with respect to it. This includes, but is not limited to, the right to become a member of the Class or to do nothing and be excluded from the Class. **Please Note** that this particular class action is different than many other class action lawsuits in the United States because, if you do nothing, you will **not** be able to participate in the lawsuit as a Class member.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT:**

<b>ASK TO BE INCLUDED (OPT INTO THE CLASS)</b>	Receive any risk corridor payments generated from this lawsuit, and be bound by its results.  In order to join the Class, <b><i>you must</i></b> submit a Class Action Opt-In Notice Form electronically, by facsimile, by first-class mail, or by pre-paid delivery service. The Class Action Opt-In Notice Form must be submitted, faxed, postmarked, or delivered by <b><u>DATE</u></b> .
<b>Do Nothing</b>	Get no benefits from the lawsuit. Keep rights to sue the United States separately.

- Your rights and options, and the deadlines to exercise them, are explained in this notice.

### What This Notice Contains

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## I. Basic Information

### 1. Why did I receive this notice?

You have been mailed this notice because government records show that you offered one or more Qualified Health Plans (“QHPs”) under the Patient Protection and Affordable Care Act (“Affordable Care Act”) in the 2016 benefit year, and that your allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of your target amounts (as those terms are defined in the Affordable Care Act).

The purpose of this notice is to inform you of a class action lawsuit regarding unpaid risk corridor amounts for the 2016 benefit year, to advise you of how your rights may be affected by this lawsuit, and to inform you how you can join or “opt in” to the lawsuit if you choose to do so. The class action lawsuit is called *Common Ground Healthcare Cooperative v. United States*, Case No. 17-877 C. This lawsuit is pending in the United States Court of Federal Claims.

### 2. What is this lawsuit about?

Plaintiff Common Ground Healthcare Cooperative claims that Defendant United States has not fully paid the risk corridors payments for 2016 to which it and other insurers such as your organization are entitled under the Affordable Care Act. Section 1342 of the Affordable Care Act established a risk corridors program that applied to insurers who offered QHPs on the Affordable Care Act’s insurance exchanges in any of the 2014, 2015, or 2016 plan years. The risk corridors program provided that QHP issuers would receive compensation from the United States if their losses exceeded a certain defined amount due to higher-than-expected utilization and medical costs for the issuer’s insureds. At the same time, the risk corridors program provided that QHP issuers would pay the government a percentage of any unexpectedly high profits they made over similarly-defined amounts. During 2014, QHPs collectively incurred almost \$2.9 billion in compensable losses under the risk corridors program. Similarly, QHPs also incurred substantial compensable losses in 2015, totaling about \$5.8 billion, and again incurred approximately \$3.95 billion in compensable losses in 2016. Defendant United States has denied it is liable for these alleged losses.

In appropriations acts for 2015, 2016, and 2017, Congress prohibited the Centers for Medicare & Medicaid Services (“CMS”) and the United States Department of Health & Human Services (“HHS”) from making risk corridor payments from funds appropriated under those acts. HHS and CMS adopted a “budget neutral” approach to the program in which only risk corridor collections from QHP issuers would be used to make risk corridor payments out to other QHP issuers. HHS also stated that distributions under the risk corridor program would be reduced pro rata to the extent of any shortfall. As a result of this budget neutral approach (which Plaintiff contends in this lawsuit violates the Affordable Care Act), QHP issuers received only 12.6% of the “payments out” calculated by the statutory formula under the risk corridors program for the 2014 plan year, representing a \$2.5 billion shortfall. Collections, or “payments in,” from the 2015 and 2016 plan years were even less, and HHS used “payments in” from those years to pay QHP issuers small portions of the “payments out” calculated by the statutory formula for the 2014 plan year, meaning that QHP issuers received no risk corridor compensation for the 2015 or 2016 plan years. Today, the collective difference between risk corridors “payments in” and “payments out” calculated by the statutory formula for the 2014, 2015, and 2016 plan years stands at over \$12 billion.

In June 2017, Plaintiff Common Ground Healthcare Cooperative filed a class action lawsuit in the United States Court of Federal Claims alleging that, through this “budget neutral” approach to the risk corridors program, the Government violated Section 1342 of the Affordable Care Act and its implementing regulations. Plaintiff claims that the Class is entitled to relief under the Tucker Act, a federal statute that provides the United States Court of Federal Claims with jurisdiction to award money judgments against the federal government where a statute is money-mandating and requires payment. The case was assigned to Judge Margaret M. Sweeney. On January 8, 2018, the Court entered an order granting class certification and appointing Quinn Emanuel Urquhart & Sullivan, LLP as lead counsel for the Class.

More detailed information about this lawsuit is contained in the Class Action Complaint filed in this lawsuit. The Class Action Complaint is available at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com).

### **3. What is requested in this lawsuit?**

Common Ground Healthcare Cooperative, the Plaintiff who filed this class action, seeks the following on behalf of itself and the Class:

- Payment from the United States of the full amount of risk corridors payments for the 2016 plan year pursuant to section 1342 of the Affordable Care Act and its implementing regulations;
- Payment to the lawyers who represent Common Ground Healthcare Cooperative who filed this lawsuit, as well as their expenses and fees associated with bringing and prosecuting this lawsuit —such payment would be drawn from any judgment, settlement, or other recovery obtained by Common Ground Healthcare Cooperative and the class; and
- The award of any other relief that the Court deems just and proper.

### **4. What is a class action and who is involved?**

In a class action lawsuit, one or more people or entities called “Class Representatives” (in this case Common Ground Healthcare Cooperative) sue on behalf of other people or entities who have similar

claims. These people or entities together are a “Class” or “Class members.” The people or entities who sued—and all the Class Members who join the lawsuit—are called “Plaintiffs.” The party or entity against whom the lawsuit is brought is called a “Defendant.” Here, the United States is the Defendant, because it is the party ultimately responsible for paying amounts owed under the Affordable Care Act. The Court of Federal Claims will resolve all legal and factual issues for every eligible Class Member who timely submits a Class Action Opt-In Notice Form. Those individuals who do not timely submit a Class Action Opt-In Notice Form will be excluded from the Class in this case.

More information about why the Court has allowed this lawsuit to be a class action is located in the Court’s Order certifying the Class, available at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com).

## II. Who May Participate In The Class Action

### 5. Am I part of this lawsuit?

You will need to decide whether you wish to join this lawsuit as a Class member. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the end of this Notice or at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com). Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members wishing to participate in this class action must join or “opt-in” to this class action lawsuit. If you fit the description in the next question, you may opt-in and join this lawsuit.

**Please Note that this “opt-in” procedure is different than many other class action lawsuits in the United States because, if do you do nothing, you will not be able to participate in the lawsuit as a Class member.**

### 6. Who is included in the Class?

Under the Rules of the United States Court of Federal Claims, the Court has allowed the lawsuit to be a class action on behalf of the following:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

## III. Your Options

### 7. How can I join the Class?

Enclosed you will find a document titled “Class Action Opt-In Notice Form.” If you choose to participate in this lawsuit, and potentially participate in any recovery that may result from this lawsuit, **it is extremely important** that you read, sign, and return the Class Action Opt-In Notice Form electronically via the website Class Counsel has established for this litigation, or by mail, courier or

facsimile to Class Counsel. The various locations and methods by which you may submit a Class Action Opt-In Notice Form are listed below:

**By Internet:**

<http://www.riskcorridorsclassaction.com2016/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

**By Courier:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
2727 Western Avenue, Suite 200  
Seattle, WA 98121

**By Mail:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box 91307  
Seattle, WA 98111

**By Facsimile:** 1-866-282-0407

The Class Action Opt-In Notice Form **must be** submitted, faxed, postmarked, or delivered on or before 60 days after the date of this Notice, that is, **on or before DATE**.

If you do not wish to participate in the lawsuit, you need not take any action.

**8. What happens once I join the Class?**

If you are eligible to be a Class member and choose to join the Class, you will receive any monetary or other benefits obtained from the lawsuit. A judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. Similarly, you may be bound by, and can share in, any settlement reached on behalf of the class. In the event Class Counsel and the United States reach a settlement, you will receive notice of the settlement and you may object to the settlement and be heard by the Court on your objection. In the case of any settlement reached before entry of judgment, Class Counsel may seek to decertify the litigation class and recertify a settlement class, which would allow any Class members that previously opted-in to decide whether to join the settlement class at that time.

Any person or entity who submits a Class Action Opt-In Notice Form to join the Class need not appear in Court in order to participate. If you become a Class Member, your interests will be represented by the Class Representative and Class Counsel. Ultimately, the Court will rule on whether you are entitled to compensation and, if so, the amount of compensation owed to you.

In order to join the Class, ***you must*** submit a Class Action Opt-In Notice Form by **DATE**. This means your Class Action Opt-In Notice Form must either be submitted electronically at <http://www.riskcorridorsclassaction2016.com/optin>, received by facsimile, postmarked, or hand delivered by **DATE**.

#### **9. Will joining the Class cost me any money?**

You will not have to pay any money out of pocket to participate in the Class Action. If the Class is successful in this litigation, however, Class Counsel will ask the Court's permission to be compensated for litigating this case and representing the successful Class. Any sums received by Class Counsel in compensation will be deducted from any recovery, which will proportionately reduce the amount of any award each Class Member receives. If the case is unsuccessful, you will have no obligation for attorneys' fees or costs.

Class Counsel represents that it will request no more than **5%** of any judgment or settlement obtained for the Class. The fee may be substantially less than 5% depending upon the level of class participation represented by the final membership of the Class. In any event, the exact percentage of Class Counsel's fees will be determined by the Court subject to, among other things, the amount at issue in the case and what is called a "lodestar cross-check" (i.e., a limitation on class counsel fees based on the number of hours actually worked on the case). *See, e.g., Genera Rock Products, Inc. v. United States*, 119 Fed. Cl. 581, 595-96 (2015); *Loving v. Sec'y of Health and Human Servs.*, 2016 WL 4098722, at \*4 (Fed. Cl. Spec. Mstr. July 7, 2016).

#### **10. What happens if I do not join the Class?**

If you do not submit a Class Action Opt-In Notice Form electronically, postmarked, faxed, or hand delivered **on or before DATE**, you **cannot participate as a Class Member** in this case. As a result, you will not receive any money or benefits from the Court as a result of this lawsuit. However, you keep the right to hire your own lawyer to sue the United States separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action.

### **IV. The Lawyers Representing You**

#### **11. Do I have a lawyer in this case to represent me?**

The Court has decided that attorneys at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, led by partners Stephen Swedlow, J.D. Horton, and Adam Wolfson, are qualified to represent you and all Class Members. Quinn Emanuel Urquhart & Sullivan, LLP is called "Class Counsel." Class Counsel has experience handling this type of lawsuit. More information about Class Counsel is available at: [www.quinnmanuel.com](http://www.quinnmanuel.com).

**12. Should I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel will work on your behalf and represent your interests if you join the Class. You have the right to have your own lawyer. Your own lawyer can appear in court for you if you want someone other than Class Counsel to speak on your behalf. If you choose to hire your own lawyer, you will have to pay that lawyer.

**V. Litigation Information**

**13. How and when will the Court decide this case?**

If the case is not resolved by a settlement, summary judgment, or otherwise, the Class Counsel will have to prove the claims of Plaintiff and the Class at trial. The parties are currently in the pre-trial discovery phase, during which they are exchanging information about the facts of the case. At a trial, the judge would hear all of the evidence to reach a decision about whether the Plaintiff or Defendant is right about the claims in this case.

**14. Do I need to go to the trial?**

You do not need to attend the trial. The Class Counsel will present the case on behalf of all Class members. You and/or your own lawyer are welcome, and entitled, to attend the trial at your own expense.

**15. Will I get any money after the trial?**

If the Class is successful and obtains money as a result of the trial or a settlement, you will be notified about how to participate and receive your share. The parties at this time do not know how long this will take.

**VI. Getting More Information**

**16. What if I need more information or have additional questions?**

If you have additional questions about this Notice, you may visit the website set up by Class Counsel: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com), or you may contact Class Counsel:

Stephen A. Swedlow, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60661  
(312) 705-7400  
[stephenswedlow@quinnemanuel.com](mailto:stephenswedlow@quinnemanuel.com)

Please do not contact the United States Court of Federal Claims with questions or requests for information.

## **Class Action Opt-In Notice Form**

UNITED STATES COURT OF FEDERAL CLAIMS

*Common Ground Healthcare Cooperative v. United States*

Case No. 17-877 C

1. Fill out this form completely and legibly. **It must be submitted, postmarked, faxed or delivered to the claims administrator (who has been retained by Class Counsel for this case and whose address is at Paragraph 5 below) on or before DATE.**

PLEASE NOTE: A notice has been sent to your address based on information in the Government's records. It is your responsibility to ensure that the information you provide on this form is complete and accurate, and that you are entitled to a distribution of money arising out of the above lawsuit.

2. Please write the full name of the person or entity that offered a Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act).

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3. Please fill in the following information.

Address: \_\_\_\_\_

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Telephone number: \_\_\_\_\_

Name, telephone number, and email address for person at QHP issuer that will act as contact for information regarding the Class Action: \_\_\_\_\_

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4. By signing your name in the space below, you are declaring under penalty of perjury under the laws of the United States and applicable state laws:

- (a) That the above-listed QHP issuer wishes to opt into the Class Action lawsuit against the United States described in the accompanying Notice (*Common Ground Healthcare Cooperative v. United States*);
- (b) That you are authorized by the above-listed QHP issuer to sign this document on behalf of the QHP issuer and thereby bind the above-listed QHP issuer;
- (c) That the above-listed QHP issuer offered Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and its allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of its target amounts (as those terms are defined in the Patient Protection and Affordable Care Act); and
- (d) That to the best of your knowledge, the above-listed QHP issuer is entitled to a distribution out of this lawsuit according to the description of the United States' alleged failure to make full risk corridors payments on an annual basis as printed in the accompanying Notice.

Sign Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Position at QHP issuer: \_\_\_\_\_

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in response to Question 2, but sign in your own name as a representative of that entity.

5. Submit this completed form to:

**By Internet:**

<http://www.riskcorridorsclassaction2016.com/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

**By Courier:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
2727 Western Avenue, Suite 200  
Seattle, WA 98121

**By Mail:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box 91307  
Seattle, WA 98111

**By Facsimile:** 1-866-282-0407

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**If you offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and your allowable costs were more than 103 percent of your target amounts, you may opt-in to join a lawsuit.**

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

**THIS NOTICE MAY AFFECT YOUR RIGHTS; PLEASE READ CAREFULLY.**

**TO:** All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act), excluding the Defendant (United States) and its members, agencies, divisions, departments, and employees.

- This legal notice has been sent to you by order of a federal court. Please read this Notice carefully and fully. It tells you about the opportunity you now have to join a class action lawsuit that is currently pending before the court.
- The Court is neither encouraging nor discouraging individuals from joining this lawsuit. This notice is intended to advise you of the *Common Ground Healthcare Cooperative v. United States* risk corridors litigation and of your rights with respect to it. This includes, but is not limited to, the right to become a member of the Class or to do nothing and be excluded from the Class. **Please Note** that this particular class action is different than many other class action lawsuits in the United States because, if you do nothing, you will **not** be able to participate in the lawsuit as a Class member.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION LAWSUIT:**

<b>ASK TO BE INCLUDED (OPT INTO THE CLASS)</b>	Receive any risk corridor payments generated from this lawsuit, and be bound by its results.  In order to join the Class, <b><i>you must</i></b> submit a Class Action Opt-In Notice Form electronically, by facsimile, by first-class mail, or by pre-paid delivery service. The Class Action Opt-In Notice Form must be submitted, faxed, postmarked, or delivered by <b><u>DATE</u></b> .
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QUESTIONS? VISIT [WWW.RISKCORRIDORSCLASSACTION2016.COM](http://WWW.RISKCORRIDORSCLASSACTION2016.COM) OR CALL ~~1-844-702-7325~~  
380-5564.

<b>Do NOTHING</b>	Get no benefits from the lawsuit. Keep rights to sue the United States separately.
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- Your rights and options, and the deadlines to exercise them, are explained in this notice.

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## **I. Basic Information**

### **1. Why did I receive this notice?**

You have been mailed this notice because government records show that you offered one or more Qualified Health Plans (“QHPs”) under the Patient Protection and Affordable Care Act (“Affordable Care Act”) in the 2016 benefit year, and that your allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of your target amounts (as those terms are defined in the Affordable Care Act).

The purpose of this notice is to inform you of a class action lawsuit regarding unpaid risk corridor amounts for the 2016 benefit year~~those two benefit years~~, to advise you of how your rights may be affected by this lawsuit, and to inform you how you can join or “opt in” to the lawsuit if you choose to do so. The class action lawsuit is called *Common Ground Healthcare Cooperative v. United States*, Case No. 17-877 C. This lawsuit is pending in the United States Court of Federal Claims.

### **2. What is this lawsuit about?**

Plaintiff Common Ground Healthcare Cooperative claims that Defendant United States has not fully paid the risk corridors payments for 2016 to which it and other insurers such as your organization are entitled under the Affordable Care Act. Section 1342 of the Affordable Care Act established a risk corridors program that applied to insurers who offered QHPs on the Affordable Care Act’s insurance exchanges in any of the 2014, 2015, or 2016 plan years. The risk corridors program provided that QHP issuers would receive compensation from the United States if their losses exceeded a certain defined amount due to higher-than-expected utilization and medical costs for the issuer’s insureds. At the same time, the risk corridors program provided that QHP issuers would pay the government a percentage of any unexpectedly high profits they made over similarly-defined amounts. During 2014, QHPs

collectively incurred almost \$2.9 billion in compensable losses under the risk corridors program. Similarly, QHPs also incurred substantial compensable losses in 2015, totaling about \$5.8 billion, and again incurred approximately \$3.95 billion in compensable losses in 2016. Defendant United States has denied it is liable for these alleged losses.

In appropriations acts for 2015, 2016, and 2017, Congress prohibited the Centers for Medicare & Medicaid Services (“CMS”) and the United States Department of Health & Human Services (“HHS”) from making risk corridor payments from funds appropriated under those acts. HHS and CMS adopted a “budget neutral” approach to the program in which only risk corridor collections from QHP issuers would be used to make risk corridor payments out to other QHP issuers. HHS also stated that distributions under the risk corridor program would be reduced pro rata to the extent of any shortfall. As a result of this budget neutral approach (which Plaintiff contends in this lawsuit violates the Affordable Care Act), QHP issuers received only 12.6% of the “payments out” calculated by the statutory formula ~~amounts owed to them~~ under the risk corridors program for the 2014 plan year, representing a \$2.5 billion shortfall. Collections, or “payments in,” from the 2015 and 2016 plan years were even less, and HHS used ~~collections “payments in” from those that~~ years to pay QHP issuers small portions of the “payments out” calculated by the statutory formula ~~their owed amounts~~ for the 2014 plan year, meaning that QHP issuers received no risk corridor compensation for the 2015 or 2016 plan years. Today, the collective difference between risk corridors “payments in” and “payments out” calculated by the statutory formula ~~shortfall~~ for the 2014, 2015, and 2016 plan years stands at over \$12 billion.

In June 2017, Plaintiff Common Ground Healthcare Cooperative filed a class action lawsuit in the United States Court of Federal Claims alleging that, through this “budget neutral” approach to the risk corridors program, the Government violated Section 1342 of the Affordable Care Act and its implementing regulations. Plaintiff Common Ground claims that the Class is entitled to relief under the Tucker Act, a federal statute that provides the United States Court of Federal Claims with jurisdiction to award money judgments against the federal government where a statute is money-mandating and requires payment. The case was assigned to Judge Margaret M. Sweeney. On January 8, 2018, the Court entered an order granting class certification and appointing Quinn Emanuel Urquhart & Sullivan, LLP as lead counsel for the Class.

More detailed information about this lawsuit is contained in the Class Action Complaint filed in this lawsuit. The Class Action Complaint ~~is and the Court’s decision on the Government’s motion to dismiss are~~ available at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com).

### 3. What is requested in this lawsuit?

Common Ground Healthcare Cooperative, the Plaintiff who filed this class action, seeks the following on behalf of itself and the Class:

- Payment from the United States of the full amount of risk corridors payments for the 2016 plan year pursuant to section 1342 of the Affordable Care Act and its implementing regulations;
- Payment to the lawyers who represent Common Ground Healthcare Cooperative who filed this lawsuit, as well as their expenses and fees associated with bringing and prosecuting this lawsuit —such payment would be drawn from any judgment, settlement, or other recovery obtained by

Common Ground Healthcare Cooperative~~Health Republic Insurance Company~~ and the class; and

- The award of any other relief that the Court deems just and proper.

#### **4. What is a class action and who is involved?**

In a class action lawsuit, one or more people or entities called “Class Representatives” (in this case Common Ground Healthcare Cooperative) sue on behalf of other people or entities who have similar claims. These people or entities together are a “Class” or “Class members.” The people or entities who sued—and all the Class Members who join the lawsuit—are called “Plaintiffs.” The party or entity against whom the lawsuit is brought is called a “Defendant.” Here, the United States is the Defendant, because it is the party ultimately responsible for paying amounts owed under the Affordable Care Act. The Court of Federal Claims will resolve all legal and factual issues for every eligible Class Member who timely submits a Class Action Opt-In Notice Form. Those individuals who do not timely submit a Class Action Opt-In Notice Form will be excluded from the Class in this case.

More information about why the Court has allowed this lawsuit to be a class action is located in the Court’s Order certifying the Class, available at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com).

## **II. Who May Participate In The Class Action**

#### **5. Am I part of this lawsuit?**

You will need to decide whether you wish to join this lawsuit as a Class member. You are not part of the Class unless and until you fill out the Class Action Opt-In Notice Form located at the end of this Notice or at the following website: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com). Rule 23 of the Rules of the United States Court of Federal Claims requires that Class Members wishing to participate in this class action must join or “opt-in” to this class action lawsuit. If you fit the description in the next question, you may opt-in and join this lawsuit.

**Please Note that this “opt-in” procedure is different than many other class action lawsuits in the United States because, if do you do nothing, you will not be able to participate in the lawsuit as a Class member.**

#### **6. Who is included in the Class?**

Under the Rules of the United States Court of Federal Claims, the Court has allowed the lawsuit to be a class action on behalf of the following:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

### III. Your Options

#### 7. How can I join the Class?

Enclosed you will find a document titled “Class Action Opt-In Notice Form.” If you choose to participate in this lawsuit, and potentially participate in any recovery that may result from this lawsuit, **it is extremely important** that you read, sign, and return the Class Action Opt-In Notice Form electronically via the website Class Counsel has established for this litigation, or by mail, courier or facsimile to Class Counsel. The various locations and methods by which you may submit a Class Action Opt-In Notice Form are listed below:

##### By Internet:

<http://www.riskcorridorsclassaction.com2016/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

##### By Courier:

Risk Corridors Class Action  
c/o JND Class Action Administration  
~~6521 West 91st Ave.~~  
~~Westminster, CO 80034~~  
~~2727 Western Avenue, Suite 200~~  
~~Seattle, WA 98121~~

##### By Mail:

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box ~~687891307~~  
~~Broomfield, CO 80021~~  
~~Seattle, WA 98111~~

##### By Facsimile: 1-866 ~~282-0407~~~~214-0156~~

The Class Action Opt-In Notice Form **must be** submitted, faxed, postmarked, or delivered on or before 60 days after the date of this Notice, that is, **on or before DATE**.

If you do not wish to participate in the lawsuit, you need not take any action.

#### 8. What happens once I join the Class?

If you are eligible to be a Class member and choose to join the Class, you will receive any monetary or other benefits obtained from the lawsuit. A judgment in this case will be binding on you, meaning you could not pursue your own separate lawsuit using your own attorney. Similarly, you may be bound by, and can share in, any settlement reached on behalf of the class. In the event Class Counsel and the

United States reach a settlement, you will receive notice of the settlement and you may object to the settlement and be heard by the Court on your objection. In the case of any settlement reached before entry of judgment, Class Counsel may seek to decertify the litigation class and recertify a settlement class, which would allow any Class members that previously opted-in to decide whether to join the settlement class at that time.

Any person or entity who submits a Class Action Opt-In Notice Form to join the Class need not appear in Court in order to participate. If you become a Class Member, your interests will be represented by the Class Representative and Class Counsel. Ultimately, the Court will rule on whether you are entitled to compensation and, if so, the amount of compensation owed to you.

In order to join the Class, ***you must*** submit a Class Action Opt-In Notice Form by **DATE**. This means your Class Action Opt-In Notice Form must either be submitted electronically at <http://www.riskcorridorsclassaction2016.com/optin>, received by facsimile, postmarked, or hand delivered by **DATE**.

#### **9. Will joining the Class cost me any money?**

You will not have to pay any money out of pocket to participate in the Class Action. If the Class is successful in this litigation, however, Class Counsel will ask the Court's permission to be compensated for litigating this case and representing the successful Class. Any sums received by Class Counsel in compensation will be deducted from any recovery, which will proportionately reduce the amount of any award each Class Member receives. If the case is unsuccessful, you will have no obligation for attorneys' fees or costs.

Class Counsel represents that it will request no more than **5%** of any judgment or settlement obtained for the Class. The fee may be substantially less than 5% depending upon the level of class participation represented by the final membership of the Class. In any event, the exact percentage of Class Counsel's fees will be determined by the Court subject to, among other things, the amount at issue in the case and what is called a "lodestar cross-check" (i.e., a limitation on class counsel fees based on the number of hours actually worked on the case). *See, e.g., Genera Rock Products, Inc. v. United States*, 119 Fed. Cl. 581, 595-96 (2015); *Loving v. Sev'y of Health and Human Servs.*, 2016 WL 4098722, at \*4 (Fed. Cl. Spec. Mstr. July 7, 2016).

#### **10. What happens if I do not join the Class?**

If you do not submit a Class Action Opt-In Notice Form electronically, postmarked, faxed, or hand delivered **on or before DATE Friday, May 12, 2017**, you **cannot participate as a Class Member** in this case. As a result, you will not receive any money or benefits from the Court as a result of this lawsuit. However, you keep the right to hire your own lawyer **or proceed without counsel** to sue the United States separately about the same legal claims in this lawsuit and you will not be legally bound by any decision of the Court in this class action.

## IV. The Lawyers Representing You

### 11. Do I have a lawyer in this case to represent me?

The Court has decided that attorneys at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP, led by partners Stephen Swedlow, J.D. Horton, and Adam Wolfson, are qualified to represent you and all Class Members. Quinn Emanuel Urquhart & Sullivan, LLP is called “Class Counsel.” Class Counsel has experience handling this type of lawsuit. More information about Class Counsel is available at: [www.quinnemanuel.com](http://www.quinnemanuel.com).

### 12. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel will work on your behalf and represent your interests if you join the Class. You have the right to have your own lawyer. Your own lawyer can appear in court for you if you want someone other than Class Counsel to speak on your behalf. If you choose to hire your own lawyer, you will have to pay that lawyer.

## V. Litigation Information

### 13. How and when will the Court decide this case?

If the case is not resolved by a settlement, summary judgment, or otherwise, the Class Counsel will have to prove the claims of Plaintiff and the Class at trial. The parties are currently in the pre-trial discovery phase, during which they are exchanging information about the facts of the case. At a trial, the judge would hear all of the evidence to reach a decision about whether the Plaintiff or Defendant is right about the claims in this case.

### 14. Do I need to go to the trial?

You do not need to attend the trial. The Class Counsel will present the case on behalf of all Class members. You and/or your own lawyer are welcome, and entitled, to attend the trial at your own expense.

### 15. Will I get any money after the trial?

If the Class is successful and obtains money as a result of the trial or a settlement, you will be notified about how to participate and receive your share. The parties at this time do not know how long this will take.

## VI. Getting More Information

### 16. What if I need more information or have additional questions?

If you have additional questions about this Notice, you may visit the website set up by Class Counsel: [www.riskcorridorsclassaction2016.com](http://www.riskcorridorsclassaction2016.com), or you may contact Class Counsel:

Stephen A. Swedlow, Esq.  
Quinn Emanuel Urquhart & Sullivan, LLP  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60661  
(312) 705-7400  
[stephenswedlow@quinnmanuel.com](mailto:stephenswedlow@quinnmanuel.com)

Please do not contact the United States Court of Federal Claims with questions or requests for information.

## **Class Action Opt-In Notice Form**

UNITED STATES COURT OF FEDERAL CLAIMS

*Common Ground Healthcare Cooperative v. United States*

Case No. 17-877 C

1. Fill out this form completely and legibly. **It must be submitted, postmarked, faxed or delivered to the claims administrator (who has been retained by Class Counsel for this case and whose address is at Paragraph 5 below) on or before Friday, DATE.**

PLEASE NOTE: A notice has been sent to your address based on information in the Government's records. It is your responsibility to ensure that the information you provide on this form is complete and accurate, and that you are entitled to a distribution of money arising out of the above lawsuit.

2. Please write the full name of the person or entity that offered a Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act).

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3. Please fill in the following information.

Address: \_\_\_\_\_

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Telephone number: \_\_\_\_\_

Name, telephone number, and email address for person at QHP issuer that will act as contact for information regarding the Class Action: \_\_\_\_\_

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4. By signing your name in the space below, you are declaring under penalty of perjury under the laws of the United States and applicable state laws:

- (a) That the above-listed QHP issuer wishes to opt into the Class Action lawsuit against the United States described in the accompanying Notice (*Common Ground Healthcare Cooperative v. United States*);
- (b) That you are authorized by the above-listed QHP issuer to sign this document on behalf of the QHP issuer and thereby bind the above-listed QHP issuer;
- (c) That the above-listed QHP issuer offered Qualified Health Plan(s) under the Patient Protection and Affordable Care Act in the 2016 benefit year, and its allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of its target amounts (as those terms are defined in the Patient Protection and Affordable Care Act); and
- (d) That to the best of your knowledge, the above-listed QHP issuer is entitled to a distribution out of this lawsuit according to the description of the United States' alleged failure to make full risk corridors payments on an annual basis as printed in the accompanying Notice.

Sign Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Print Your Name: \_\_\_\_\_

Position at QHP issuer: \_\_\_\_\_

Note: If you represent an entity making a claim, such as a corporation, partnership, or trust, please identify the name of that entity in response to Question 2, but sign in your own name as a representative of that entity.

5. Submit this completed form to:

**By Internet:**

<http://www.riskcorridorsclassaction2016.com/optin>

- A copy of the Class Action Opt-In Notice Form may also be downloaded at this URL.

**By Courier:**

Risk Corridors Class Action

c/o JND Class Action Administration

~~6521 West 91st Ave.~~

~~Westminster, CO 80031~~ ~~2727 Western Avenue, Suite 200~~  
~~Seattle, WA 98121~~

**By Mail:**

Risk Corridors Class Action  
c/o JND Class Action Administration  
PO Box 687891307  
Broomfield, CO 80021 Seattle, WA 98111

**By Facsimile:** 1-866-282-0407214-0156