IN THE UNITED STATES COURT OF FEDERAL CLAIMS

RAYMOND G. FARMER, in his capacity As Liquidator of Consumers' Choice Health Insurance Company, et al.,	:	No. 17-363C
Plaintiffs,	:	Judge Campbell-Smith
v.	:	
THE UNITED STATES OF AMERICA,	:	
Defendant.	:	

JOINT STATUS REPORT

On April 27, 2020, the Supreme Court issued its decision in *Maine Community Health Options v. United States*, No. 18-1023, 590 U.S. --- (2020). The Supreme Court held that the risk corridors statute, section 1342 of the Patient Protection and Affordable Care Act ("ACA"), "created an obligation neither contingent on nor limited by the availability of appropriations or other funds." Slip Op. at 16. The Court also determined that the obligation was not affected by subsequently enacted legislation and held that the "petitioners may seek to collect payment through a damages action in the Court of Federal Claims." *Id.* at 30. Along with three other similar risk corridors cases, the Court reversed the judgments of the Federal Circuit and remanded the cases to that court for further proceedings consistent with the opinion.

The United States continues to review the Supreme Court's opinion. That process of review requires that we confer with various components within the Department of Justice and the Department of Health and Human Services in order to discern a path forward. We ask the Court to permit the United States additional time to consider how the Supreme Court's ruling impacts all of the cases in this Court in which a plaintiff seeks damages under section 1342, so that the United

States may propose an efficient and appropriate process to reach a conclusion in this case, and every other risk corridors case before the Court.

The United States also requests additional time for review because risk corridors was a nationwide program involving every single health insurance issuer participating on an ACA Exchange during benefit years 2014, 2015, or 2016. Some of those issuers are represented in the more than 64 individual cases pending before this Court; others are represented in this Court through either of two class actions; and still other issuers have not commenced litigation. The United States believes it would be most appropriate and fair to resolve all issuers' potential entitlement under section 1342. In order to do so, the United States must consider and address a number of issues before these cases proceed.

To start, the United States notes that since the time that most complaints were filed, the Department of Health and Human Services ("HHS") has made additional pro rata distribution of risk corridors collections to many of the plaintiffs before this Court. HHS is now determining the precise amount of risk corridors payments paid to and remaining for each health insurance issuer before this Court, as well as to any issuer with a potential risk corridors claim. Agency staff requires additional time to review the record of payments and charges and the history of distributions made to ensure they are complete and accurate. HHS must finish this review before the United States will be in a position to pursue a potential consensual resolution of an issuer's case, and that review is most efficiently done on a program-wide, rather than piecemeal (or ad hoc) basis.

To cite another consideration, some of the plaintiffs may have outstanding debts owed to HHS under other ACA programs. In order to determine which issuers have such debts pending, HHS must review its records across ACA programs and distill that information for consideration

by government officials with authority to evaluate the issues. Those parties owing debts and the United States should then have an opportunity to confer to seek to resolve those issues, and, as necessary, to prepare and propose a procedure to dispose of outstanding matters. Finally, because the United States has not yet answered any of the plaintiffs' complaints, the United States needs to consider whether it would be appropriate to raise defenses not previously considered and whether to answer and counterclaim.

For all of these reasons, the United States requests that the Court allow the government 45 days within which to consider its position in these cases and to propose, jointly with the Plaintiff to the extent possible, a course to govern proceedings moving forward. Within that time, the Court could allow the Plaintiff the opportunity to refine or update its claim for damages whether through formal amendment of its complaint or through less formal means. The United States also requests that, in the interest of efficiency, the Court defer the government's obligation to respond to a complaint or an amended complaint until the end of the requested 45-day period, which would be July 13, 2020.

Plaintiff does not oppose the United States' requests.

Respectfully submitted,

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