



MBS:ABKlein

U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Ave., N.W., Rm. 7235
Washington, D.C. 20530-0001

Tel: (202) 514-1597
Email: alisa.klein@usdoj.gov

February 20, 2018

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

RE: *Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 17-1224

Dear Mr. Marksteiner:

Oral argument in this case was heard on January 10, 2018. We respectfully submit this response to plaintiff's letter of February 16, 2018, which argued a recent HHS budget document supported its position. That budget document reflected an accounting treatment that was used by the agency during the initial administration of the risk-corridors program. The program periods for collecting funds have concluded and HHS has made accounting adjustments to reflect that termination. These accounting adjustments reflect that it does not have unfunded obligations under the program, and HHS' Budget in Brief has been adjusted to reflect that. The language on which plaintiff relied does not appear in the revised budget document, which is available at <https://www.hhs.gov/sites/default/files/fy-2019-budget-in-brief.pdf>.

In any event, the agency's accounting methodology has no bearing on the legal issue before the Court. As discussed in our brief, "[i]f a given transaction is not sufficient to constitute a valid obligation, recording it will not make it one." Gov. Br. 43 (quoting GAO, *Principles of Federal Appropriations Law* (Vol. II) at 7-8 (3d ed. 2004)); *see also* Gov. Br. 41-43.

Sincerely,

/s/ Alisa B. Klein

Alisa B. Klein
Counsel for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2018, I electronically filed the foregoing letter with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

s/ Alisa B. Klein

ALISA B. KLEIN