

CLIENT ALERT

COFC Holds That ACA "Risk Corridors" Program Requires Annual Payment

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In *Health Republic Insurance Co. v. U.S.* (Jan. 10, 2017), the Court of Federal Claims (Court) rejected the Government's motion to dismiss a lawsuit filed under the Tucker Act seeking to recover "risk corridors" payments pursuant to §1342 of the Affordable Care Act, holding that "HHS is required to make annual risk corridors payments to eligible qualified health plans" under the ACA, and that the "plaintiff's claim for unpaid risk corridors payments is ripe for adjudication." The Court's decision was based on several factors, including the risk corridors program's purpose of stabilizing insurance premiums in the ACA's new and untested health insurance marketplace; notably, the Court held that even if the ACA were ambiguous and the court were to apply a *Chevron* deference analysis, HHS has interpreted the program to require annual payments, and the agency's own actions (*i.e.*, making partial annual payments) indicate it believes the program is annual in nature.

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