

Congress of the United States
Washington, DC 20515

October 6, 2016

Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Ave, S.W., Room 445-G
Washington, DC 20201

Dear Mr. Slavitt:

As you know, the Centers for Medicare & Medicaid Services (CMS) published on July 6 its calendar year 2017 outpatient prospective payment system (OPPS) proposed rule for implementing Section 603 of the Bipartisan Budget Act of 2015, "Treatment of off-campus outpatient departments of a provider." We strongly believe numerous areas need more flexibility to ensure patients have continued access to care, and we urge changes in the final rule to protect our constituents who are Medicare patients.

On May 24, a majority of both Houses of Congress (235 Members of the House and 51 Senators) signed letters to CMS stressing the importance of implementing Section 603 in a way that protects patients' access to care and provides predictability for hospitals. We are disappointed that many of those concerns were not addressed in the proposed rule, and we hope the final rule can better address these areas.

As you know, after stating that dedicated emergency departments (DEDs) are excluded, the new law establishes lower payment levels for new off-campus hospital outpatient departments (HOPDs). These "new" HOPDs are defined as those that start billing for Medicare outpatient services under the outpatient prospective payment system (OPPS) after the date of enactment, November 2, 2015. Beginning January 1, 2017, services provided in these "new" HOPDs (excluding DEDs) will no longer be covered as OPPS services. They will instead be covered under other Medicare Part B payment systems: the Medicare physician fee schedule, the clinical laboratory fee schedule, and the ambulatory surgery center payment system.

The facilities impacted by this law often serve the most vulnerable patient populations in difficult-to-serve areas, and a number of clarifications in the rule are needed to ensure they can continue serving their communities. While many hospitals have projects underway or planned for the near future, others had taken a longer view in their strategic planning and relied on regulations by expending financial resources to meet the needs of a changing population. Thus, as you plan for implementation of Section 603, we urge you to include flexibility in the following areas: additional services provided at emergency departments, relocation or rebuilding of already existing outpatient departments, change of ownership of existing sites, and interpretation of the 250-yard rule.

We appreciate that you recognized the important and varied work that emergency departments provide. Section 603 refers to the Emergency Medical Treatment and Labor Act (EMTALA) regulations in 42 CFR 489.24(b), which state that a department can be defined as a DED if it "provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis." This definition recognizes that hospital emergency departments provide a wide range of services, and that ancillary services provided by a DED are needed to diagnose and treat patients. When a facility meets the

definition of a DED, none of the services furnished in that facility should be subject to the payment reductions.

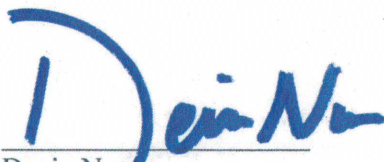
We are also concerned about the treatment of necessary and valid relocations of existing HOPDs. Existing HOPDs may need to relocate for various reasons, such as being located on an earthquake fault line or a revised flood plain, having a lease expire, becoming obsolete or damaged, or becoming too small because of population shifts and increased patient loads. The need to relocate or rebuild for these types of reasons should not trigger payment reductions under Section 603.

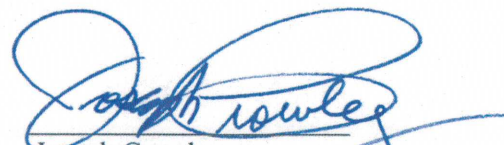
Similarly, a change in ownership should not cause an HOPD to lose its status as an existing HOPD. The only criteria under Section 603 for being designated as an existing HOPD rather than as a "new" HOPD is that the facility was billing under the OPSS prior to November 2, 2015. A change of ownership, such as one hospital system acquiring the existing HOPD from a second hospital, is not separately discussed in the statute. Therefore, a change in ownership should not cause an existing HOPD to be redesignated as a "new" one, and an existing site should continue to be paid under the OPSS even after a change in ownership.

Lastly, current regulations define "on-campus" as buildings within 250 yards of the main buildings of the hospital or other buildings that the CMS regional office determines, on a case-by-case basis, to be part of the hospital campus. Emphasizing the discretion of regional offices is important because a consistently strict interpretation of the 250-yard criterion would disadvantage hospitals that are adjacent to barriers that could prevent on-campus expansion. Such barriers include rivers, wetlands, highways, and those located in densely populated urban areas or those co-located on land-locked university campuses. A narrow and strict interpretation of the 250-yard rule could result in sites being designated as off-campus, and thus subject to payment reductions, despite a clear proximity and integration with the hospital's campus. Therefore, we urge CMS to instruct its regional offices to use the rule of "reasonable proximity" when making on-campus determinations and to evaluate on-campus status within the context of the hospital and its surrounding geography.

We hope CMS will continue to ensure that patients can access care and services at the appropriate site of care in their community. We believe the clarifications in the OPSS rule discussed above will maintain quality access to care for Medicare beneficiaries, and we appreciate your consideration of these issues.

Sincerely,


Devin Nunes
Member of Congress


Joseph Crowley
Member of Congress

Ralph Lee Abraham, M.D.
Member of Congress

Alma S. Adams
Member of Congress

Pete Aguilar
Member of Congress

Lou Barletta
Member of Congress

Andy Barr
Member of Congress

Karen Bass
Member of Congress

Joyce Beatty
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Ami Bera
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Earl Blumenauer
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Susan W. Brooks
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Julia Brownley
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Cheri Bustos
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Bradley Byrne
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Michael Capuano
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André Carson
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Earl L. "Buddy" Carter
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Matthew A. Cartwright

Matt Cartwright
Member of Congress

Kathy Castor

Kathy Castor
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Steve Chabot
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David N. Cicilline
Member of Congress

Katherine Clark

Katherine Clark
Member of Congress

Yvette D. Clarke

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Member of Congress

William "Lacy" Clay

William "Lacy" Clay
Member of Congress

Mike Coffman

Mike Coffman
Member of Congress

Steve Cohen

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Barbara Comstock

Barbara Comstock
Member of Congress

K. Michael Conaway

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Member of Congress

Gerald E. Connolly

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John Conyers Jr.

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Paul Cook

Paul Cook
Member of Congress

Jim Costa

Jim Costa
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Ryan A. Costello

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Kevin Cramer

Kevin Cramer
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Danny Davis
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Rodney Davis
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Susan Davis

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Peter DeFazio

Peter DeFazio
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Diana DeGette

Diana DeGette
Member of Congress

Suzan DelBene

Suzan DelBene
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Jeff Denham

Jeff Denham
Member of Congress

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Charles W. Dent
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Mark DeSaulnier Debbie Dingell

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Member of Congress

Debbie Dingell
Member of Congress

Robert J. Dold

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Member of Congress

Daniel Donovan

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Member of Congress

Mike Doyle

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Member of Congress

Tammy Duckworth

Tammy Duckworth
Member of Congress

Sean Duffy

Sean Duffy
Member of Congress

John J. Duncan, Jr.

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Member of Congress

Tom Emmer

Tom Emmer
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Anna G. Eshoo

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Mike Fitzpatrick
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Bill Foster
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Trent Franks

Trent Franks
Member of Congress

Rodney Frelinghuysen

Rodney Frelinghuysen
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Marcia Fudge

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Ruben Gallego

Ruben Gallego
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John Garamendi

John Garamendi
Member of Congress

Scott Garrett

Scott Garrett
Member of Congress

Bob Gibbs

Bob Gibbs
Member of Congress

Chris Gibson

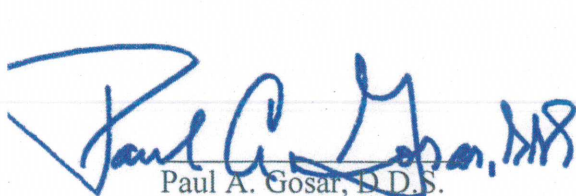
Chris Gibson
Member of Congress


Louie Gohmert


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Member of Congress

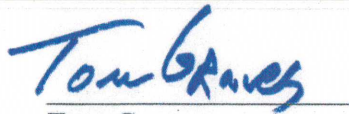
Bob Goodlatte

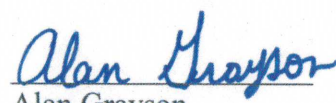
Bob Goodlatte
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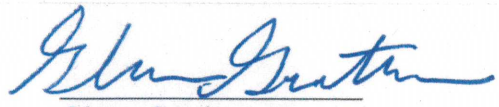

Paul A. Gosar, D.D.S.
Member of Congress

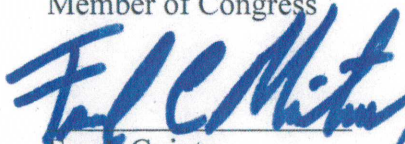

Garret Graves
Member of Congress

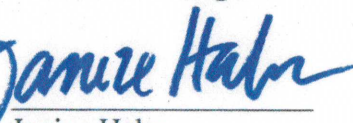

Sam Graves
Member of Congress

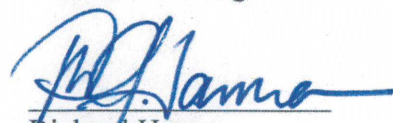

Tom Graves
Member of Congress

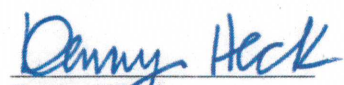

Alan Grayson
Member of Congress

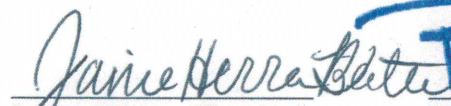

Glenn Grothman
Member of Congress

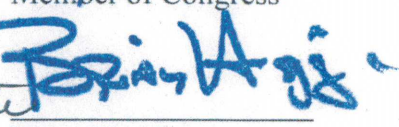

Frank Guinta
Member of Congress

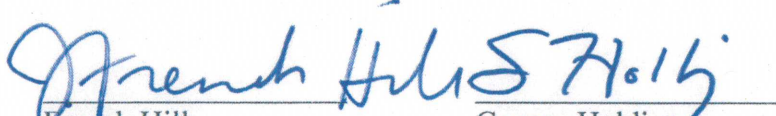

Janice Hahn
Member of Congress

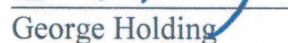

Richard Hanna
Member of Congress

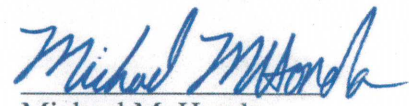

Denny Heck
Member of Congress

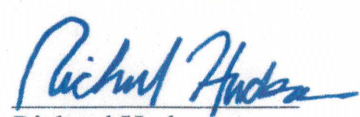

Jaime Herrera Beutler
Member of Congress

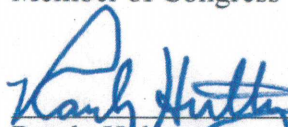

Brian Higgins
Member of Congress

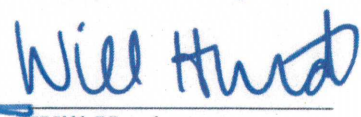

French Hill
Member of Congress

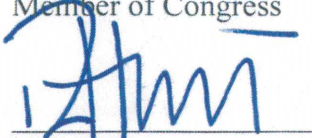

George Holding
Member of Congress

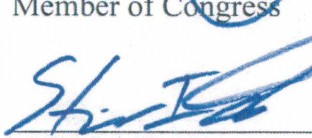

Michael M. Honda
Member of Congress

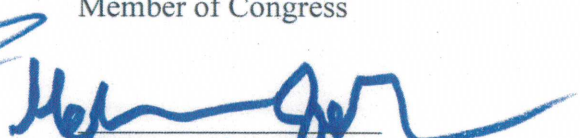

Richard Hudson
Member of Congress



Randy Hultgren
Member of Congress

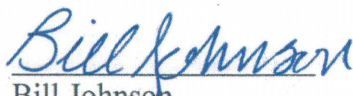

Will Hurd
Member of Congress



Robert Hurt
Member of Congress

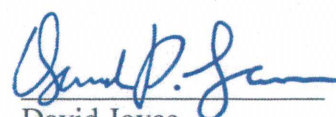

Steve Israel
Member of Congress

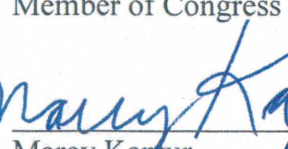

Hakeem Jeffries
Member of Congress

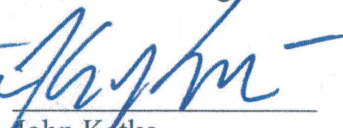

Evan Jenkins
Member of Congress


Bill Johnson
Member of Congress


Hank Johnson
Member of Congress


David Joyce
Member of Congress


Marcy Kaptur
Member of Congress


John Katko
Member of Congress

William Keating

William Keating
Member of Congress

Mike Kelly

Mike Kelly
Member of Congress

Robin Kelly

Robin Kelly
Member of Congress

Joseph Kennedy III

Joseph Kennedy III
Member of Congress

Dan Kildee

Dan Kildee
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Derek Kilmer

Derek Kilmer
Member of Congress

Ron Kind

Ron Kind
Member of Congress

Peter King

Peter King
Member of Congress

Steve King

Steve King
Member of Congress

Ann Kirkpatrick

Ann Kirkpatrick
Member of Congress

Ann Kuster

Ann Kuster
Member of Congress

Darin LaHood

Darin LaHood
Member of Congress

Doug LaMalfa

Doug LaMalfa
Member of Congress

Jim Langevin

Jim Langevin
Member of Congress

John Larson

John Larson
Member of Congress

Robert E. Latta

Robert E. Latta
Member of Congress

Brenda Lawrence

Brenda Lawrence
Member of Congress

Barbara Lee

Barbara Lee
Member of Congress

John Lewis

John Lewis
Member of Congress

Ted W. Lieu

Ted Lieu
Member of Congress

Frank LoBiondo

Frank LoBiondo
Member of Congress

David Loebbeck

David Loebbeck
Member of Congress

Zoe Lofgren

Zoe Lofgren
Member of Congress

Bill Long

Bill Long
Member of Congress

Barry Loudermilk

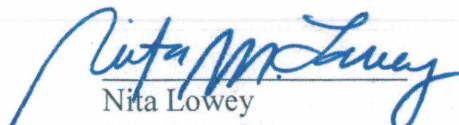
Barry Loudermilk
Member of Congress

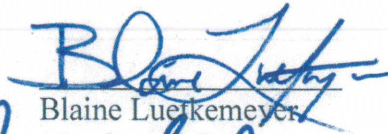
Mia Love

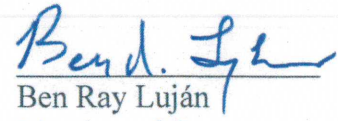
Mia Love
Member of Congress

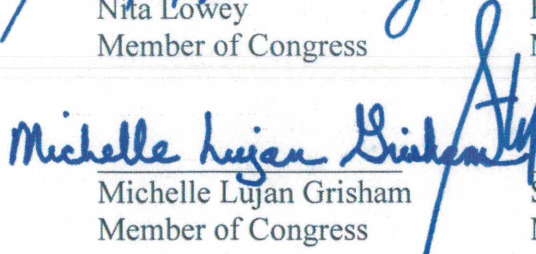
Alan Lowenthal

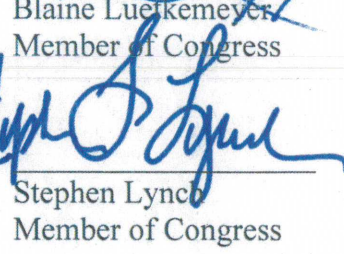
Alan Lowenthal
Member of Congress

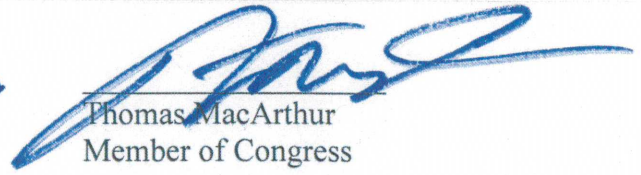

Nita Lowey
Member of Congress

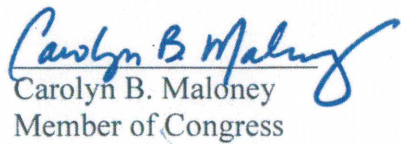

Blaine Luetkemeyer
Member of Congress

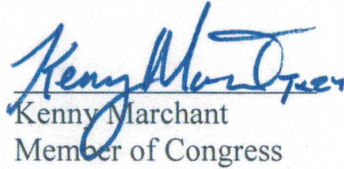

Ben Ray Lujan
Member of Congress

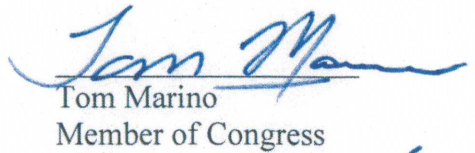

Michelle Lujan Grisham
Member of Congress

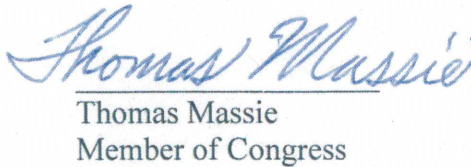

Stephen Lynch
Member of Congress


Thomas MacArthur
Member of Congress

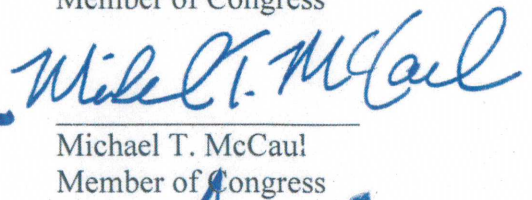

Carolyn B. Maloney
Member of Congress

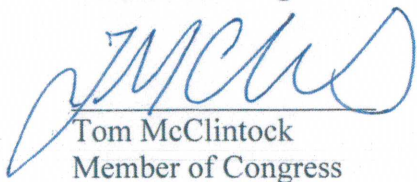

Kenny Marchant
Member of Congress

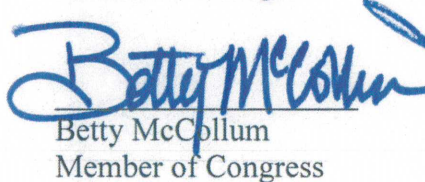

Tom Marino
Member of Congress

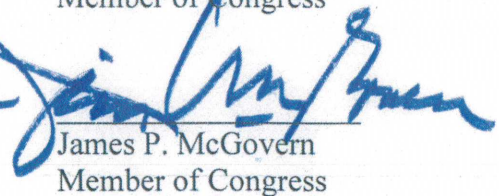

Thomas Massie
Member of Congress

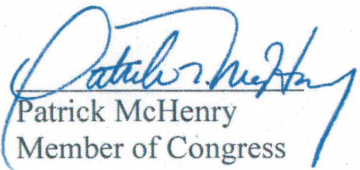

Doris O. Matsui
Member of Congress

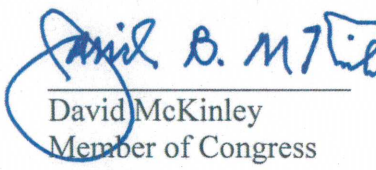

Michael T. McCaul
Member of Congress

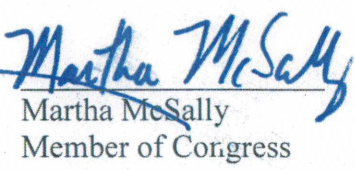

Tom McClintock
Member of Congress

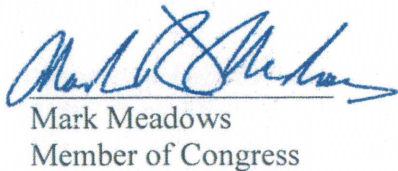

Betty McCollum
Member of Congress

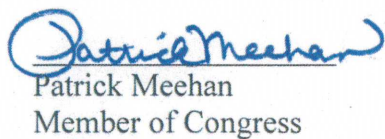

James P. McGovern
Member of Congress

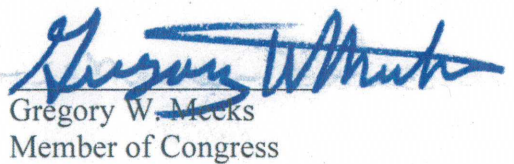

Patrick McHenry
Member of Congress

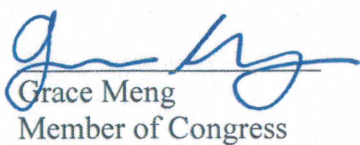

David McKinley
Member of Congress

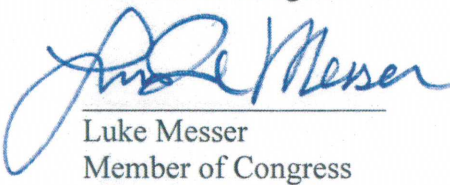

Martha McSally
Member of Congress

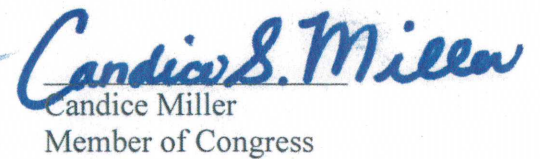

Mark Meadows
Member of Congress

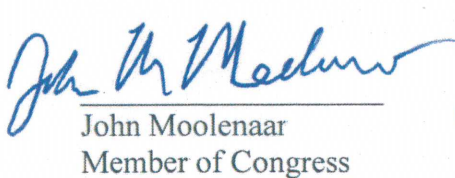

Patrick Meehan
Member of Congress

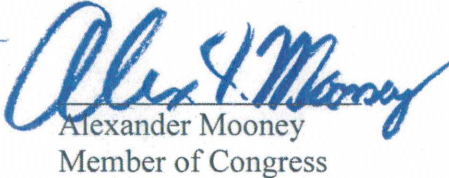

Gregory W. Meeks
Member of Congress

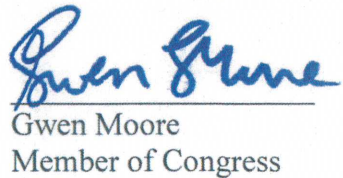

Grace Meng
Member of Congress


Luke Messer
Member of Congress


Candice S. Miller
Member of Congress


John Moolenaar
Member of Congress


Alexander Mooney
Member of Congress


Gwen Moore
Member of Congress

Seth Moulton

Seth Moulton
Member of Congress

Markwayne Mullin

Markwayne Mullin
Member of Congress

Patrick Murphy

Patrick Murphy
Member of Congress

Tim Murphy

Tim Murphy
Member of Congress

Jerrold Nadler

Jerrold Nadler
Member of Congress

Grace J. Napolitano

Grace Napolitano
Member of Congress

Richard E. Neal

Richard Neal
Member of Congress

Dan Newhouse

Dan Newhouse
Member of Congress

Kristi Noem

Kristi Noem
Member of Congress

Donald Norcross

Donald Norcross
Member of Congress

Pete Olson

Pete Olson
Member of Congress

Beto O'Rourke

Beto O'Rourke
Member of Congress

Bill Pascrell Jr.

Bill Pascrell Jr.
Member of Congress

Donald M. Payne Jr.

Donald M. Payne Jr.
Member of Congress

Steve Pearce

Steve Pearce
Member of Congress

Scott Perry

Scott Perry
Member of Congress

Scott Peters

Scott Peters
Member of Congress

Collin C. Peterson

Collin C. Peterson
Member of Congress

Chellie Pingree

Chellie Pingree
Member of Congress

Robert Pittenger

Robert Pittenger
Member of Congress

Mark Pocan

Mark Pocan
Member of Congress

Bruce Poliquin

Bruce Poliquin
Member of Congress

Jared Polis

Jared Polis
Member of Congress

Bill Posey

Bill Posey
Member of Congress

Mike Quigley

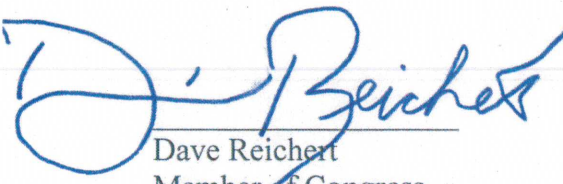
Mike Quigley
Member of Congress

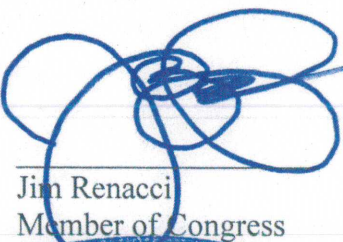
Charles B. Rangel

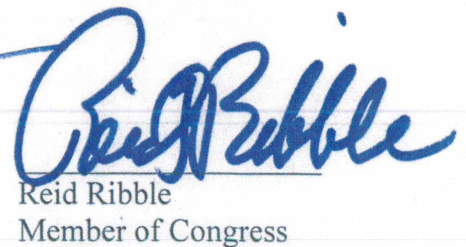
Charles B. Rangel
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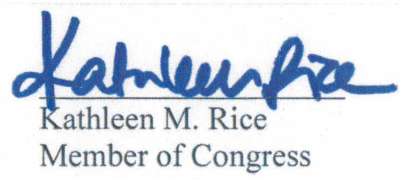
Tom Reed

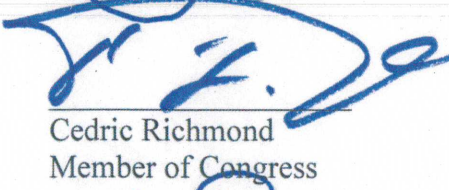
Tom Reed
Member of Congress

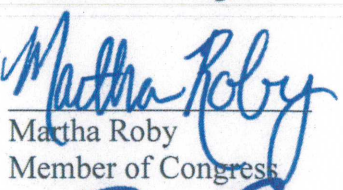

Dave Reichert
Member of Congress

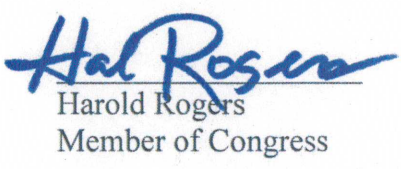

Jim Renacci
Member of Congress

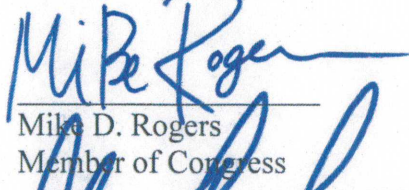

Reid Ribble
Member of Congress

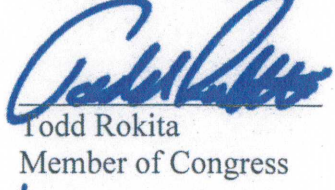

Kathleen M. Rice
Member of Congress

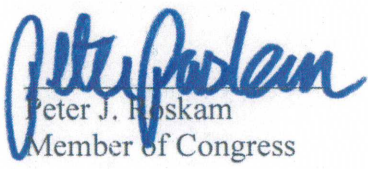

Cedric Richmond
Member of Congress

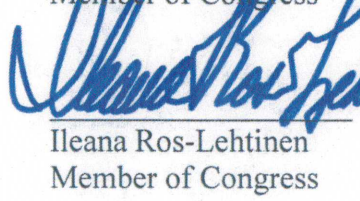

Martha Roby
Member of Congress

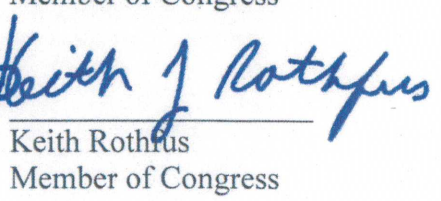

Harold Rogers
Member of Congress

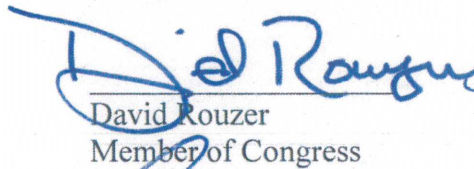

Mike D. Rogers
Member of Congress

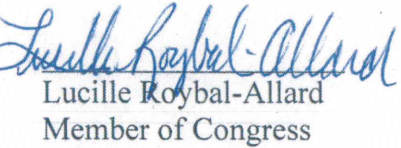

Todd Rokita
Member of Congress

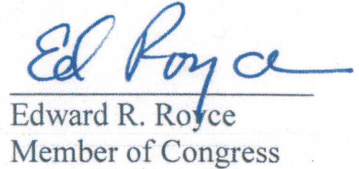

Peter J. Roskam
Member of Congress

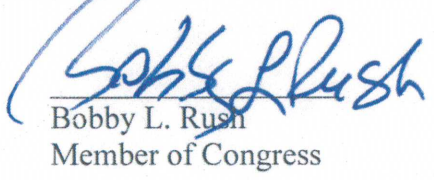

Ileana Ros-Lehtinen
Member of Congress

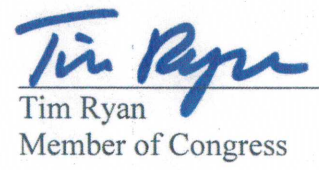

Keith Rothfus
Member of Congress

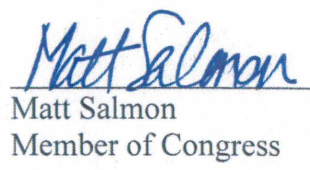

David Rouzer
Member of Congress

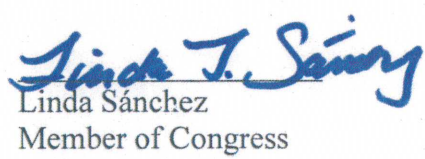

Lucille Roybal-Allard
Member of Congress

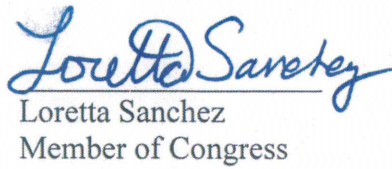

Edward R. Royce
Member of Congress

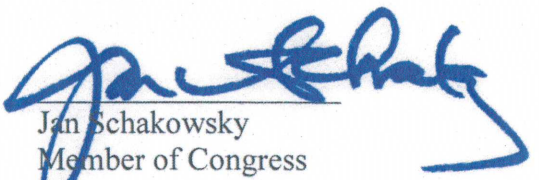

Bobby L. Rush
Member of Congress

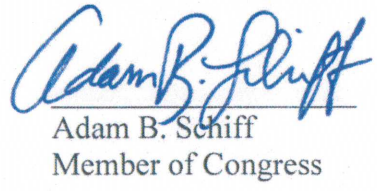

Tim Ryan
Member of Congress

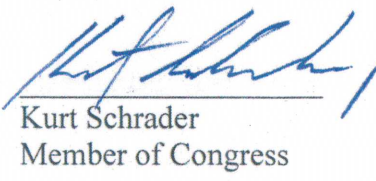

Matt Salmon
Member of Congress

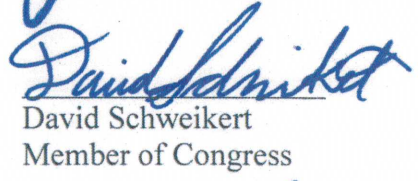

Linda Sánchez
Member of Congress

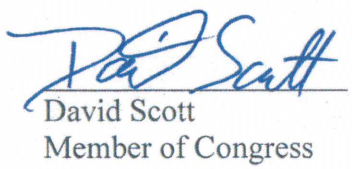

Loretta Sanchez
Member of Congress

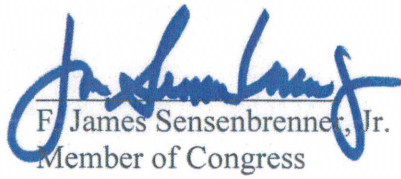

Jan Schakowsky
Member of Congress

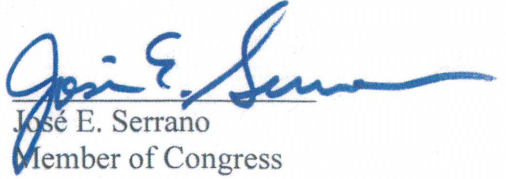

Adam B. Schiff
Member of Congress


Kurt Schrader
Member of Congress


David Schweikert
Member of Congress


David Scott
Member of Congress


F. James Sensenbrenner, Jr.
Member of Congress


José E. Serrano
Member of Congress

Bill Shuster

Bill Shuster
Member of Congress

Mike Simpson

Mike Simpson
Member of Congress

Kyrsten Sinema

Kyrsten Sinema
Member of Congress

Albio Sires

Albio Sires
Member of Congress

Louise Slaughter

Louise Slaughter
Member of Congress

Chris Smith

Chris Smith
Member of Congress

Jason Smith

Jason Smith
Member of Congress

Jackie Speier

Jackie Speier
Member of Congress

Elise M. Stefanik

Elise Stefanik
Member of Congress

Chris Stewart

Chris Stewart
Member of Congress

Steve Stivers

Steve Stivers
Member of Congress

Eric Swalwell

Eric Swalwell
Member of Congress

Glenn 'GT' Thompson

Glenn 'GT' Thompson
Member of Congress

Mike Thompson

Mike Thompson
Member of Congress

Pat Tiberi

Pat Tiberi
Member of Congress

Scott Tipton

Scott Tipton
Member of Congress

Paul D. Tonko

Paul D. Tonko
Member of Congress

Norma Torres

Norma Torres
Member of Congress

Dave Trott

Dave Trott
Member of Congress

Niki Tsongas

Niki Tsongas
Member of Congress

Michael R. Turner

Michael R. Turner
Member of Congress

David G. Valadao

David G. Valadao
Member of Congress

Juan Vargas

Juan Vargas
Member of Congress

Marc Veasey

Marc Veasey
Member of Congress

Filemon Vela

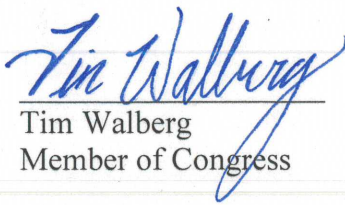
Filemon Vela
Member of Congress

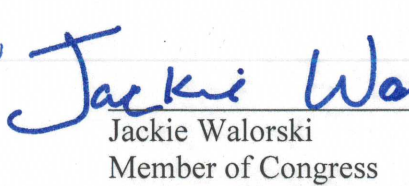
Nydia Velázquez

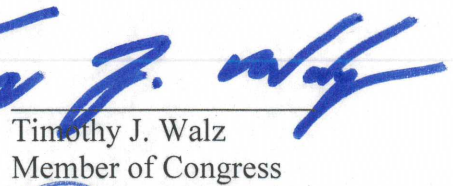
Nydia Velázquez
Member of Congress

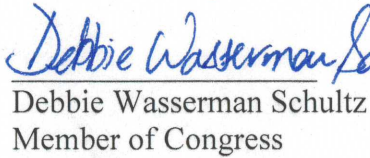
Ann Wagner

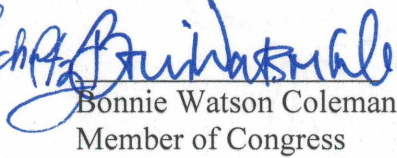
Ann Wagner
Member of Congress

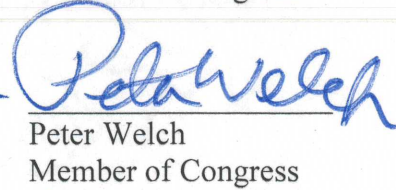

Tim Walberg
Member of Congress

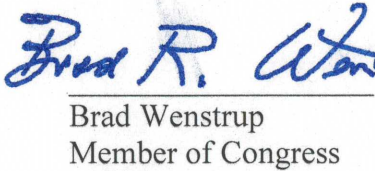

Jackie Walorski
Member of Congress

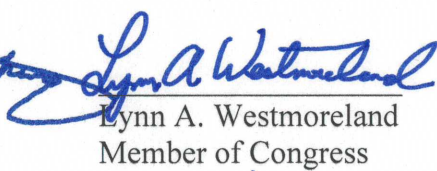

Timothy J. Walz
Member of Congress

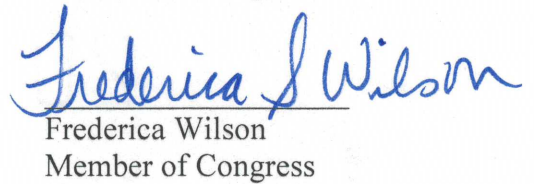

Debbie Wasserman Schultz
Member of Congress

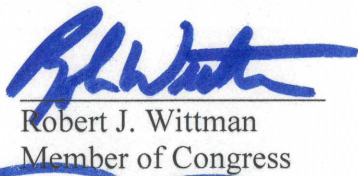

Bonnie Watson Coleman
Member of Congress

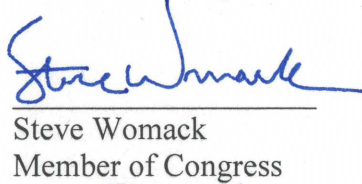

Peter Welch
Member of Congress

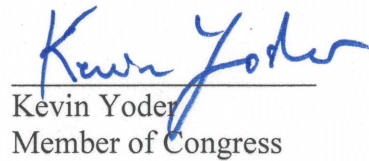

Brad Wenstrup
Member of Congress

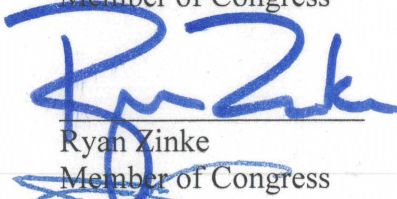

Lynn A. Westmoreland
Member of Congress

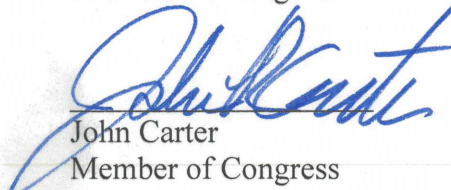

Frederica Wilson
Member of Congress

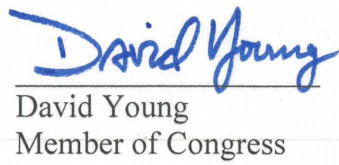

Robert J. Wittman
Member of Congress

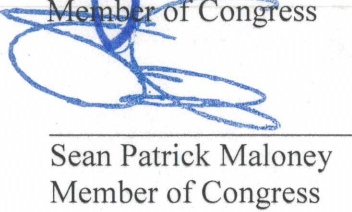

Steve Womack
Member of Congress


Kevin Yoder
Member of Congress


Ryan Zinke
Member of Congress


John Carter
Member of Congress


David Young
Member of Congress


Sean Patrick Maloney
Member of Congress