June 15, 2012

Honorable Paul Sarlo c/o
David J. Rosen
Legislative Budget and Finance Officer
Office of Legislative Services
State House Annex
PO Box 068
Trenton, NJ 08625-0068

Re: Department of Banking and Insurance Budget Hearing Response

Dear Chairman Sarlo,

Please accept the following in response to your May 2, 2012 letter requesting follow-up information with respect to the questions raised by Senators Weinberg, Pou and yourself at the Department of Banking and Insurance (Department) budget hearing on May 1, 2012.

1. Please clarify for the committee the total amounts of money anticipated to be received by both the State and individual New Jersey homeowners as a result of the Joint State-Federal Mortgage Servicing Settlement.

The answer that I provided at the time of the Department’s budget hearing was limited solely to the amounts of relief that New Jersey homeowners would receive through mortgage lenders that had signed onto the consent agreement. At that time I had indicated that the amount was approximately $750 million. A more accurate amount is $762 million. This is relief which will be provided both directly and indirectly to homeowners through the following methods:

- $660 million in credits to lenders for the value of loan relief to be afforded eligible New Jersey homeowners under the settlement terms;
- $12.5 million in direct cash payments to New Jersey borrowers who lost their homes to foreclosure between January 1, 2008 and December 31, 2011, and who file a claim; and
- $89.5 million in credits to lenders for the value of refinancing eligible underwater New Jersey homeowners.

Additionally, the settlement agreement called for $75.5 million to be paid directly to the Office of the Attorney General.
Finally, each state’s financial regulator is to receive $1 million. The Conference of State Bank Supervisors will be routing this money to financial regulators directly. As of today, the Department has not yet received these funds. The Department anticipates using these funds for purposes related to overseeing certain lending practices, but to date no final determination has been made.

This represents a total of $838.5 million that the State and eligible New Jersey homeowners will receive both directly and indirectly.

Of note, on May 14, 2012, Ally Financial filed for Chapter 11 bankruptcy protection for ResCap (formerly GMAC). At this time, the reorganization appears unlikely to affect GMAC’s payment and performance obligations under the settlement as it has already deposited its share of $109 million of the national settlement into an escrow account.

2. **Provide the committee the actions New Jersey has already undertaken to implement requirements of the “Patient Protection and Affordable Care Act,” Pub. L.111-148 and the “Health Care and Education Reconciliation Act of 2010,” Pub. L.111-152, collectively more commonly known as the “Affordable Care Act.”** Please also detail the actions New Jersey will need to undertake to implement the Affordable Care Act in the future.

**Actions New Jersey Already Has Taken to Implement Requirements of the Affordable Care Act**

Since the passage of the Affordable Care Act (ACA), the Department has worked collaboratively to coordinate New Jersey’s compliance in the manner most advantageous to the State and its citizens. Among other things, the Administration established an Interdepartmental Working Group of representatives of multiple State agencies and boards to assure coordination of efforts. Members of the Working Group include representatives of: the Department of Banking and Insurance (DOBI), including the Individual Health Coverage Program (IHC) and the Small Employer Health Benefits Program (SEH) Boards; the Department of Human Services (specifically from the Division of Medical Assistance and Health Services, which oversees Medicaid and the Children’s Health Insurance Program (CHIP) in the State); the Department of Health and Senior Services; the Department of the Treasury (specifically the Division of Pension and Benefits, which supports the State Health Benefits Program); and the Governor’s Office on Health Information Technology.

At the budget hearing Senator Weinberg indicated that she had previously inquired and she was not sure that she had received an answer on whether the Legislature or the Senate Health, Human Services and Senior Citizens Committee and the Senate Commerce Committee had been updated on the activities of the Interdepartmental Working Group. The Department had previously responded to inquiries by Senator Weinberg on October 24, 2011 discussing specifically the activities of the Interdepartmental Working Group during the preceding six months and on January 6, 2012 on the use of the various grant funds. Additionally, DOBI Assistant Commissioner of Life & Health Neil Sullivan testified before a joint hearing of the Senate Health,
Human Services and Senior Citizens Committee and the Senate Commerce Committee on March 3, 2011, co-chaired by Senator Weinberg, "on the status of federal healthcare reform implementation in New Jersey, including preparations for a health insurance exchange." The Department is not aware of any other request from the Legislature for information or testimony regarding implementation activities.

The Department has been the lead agency with respect to establishment of a Pre-existing Condition Insurance Program (PCIP) and Exchange Planning Grants, which the State applied for in September 2010 and December 2011. However, other members of the Working Group provided input on the grant applications, project designs, and selection of consultants. In addition, the results of research and projects completed to date have been presented to the Working Group, so that the group as a whole could address all critical issues regarding implementation. Other departments and agencies have taken the lead on other aspects of the ACA, such as the Early Retiree Reinsurance Program, which are not addressed here.

New Jersey has researched best practices and lessons learned from other states by participating in the State Planning Grantee meetings, National Governors Association meetings, and National Association of Insurance Commissioners meetings. Key project staff are also connected to the “Exchangers” listserv hosted by the National Academy for State Health Policy, and participate in educational webinars.

Immediately following passage of the ACA, the Department established an ACA page on its website to keep interested stakeholders informed on aspects affecting insurance markets. The website’s address is: http://www.state.nj.us/dobi/division_consumers/insurance/ppaca.html.

**NJ Protect (Pre-existing Condition Insurance Program)**

The ACA established a $5 billion nationwide temporary program to provide high risk pool coverage to individuals who have been uninsured for at least six months and have a pre-existing medical condition. New Jersey’s share of this funding is $141 million, which must last until December 31, 2013. All states had the option of running their own PCIP or participating in a federal PCIP administered by the Government Employees Health Association (GEHA). High risk pools are typically used as an insurer of last resort for otherwise uninsurable individuals in states that permit medical underwriting. New Jersey is one of only five guaranteed-issue states where insurers are prohibited from medically underwriting, and the State feared the federal government would not understand how to run such a program in our market. The State was also concerned that a temporary administrator would place people in a plan they may be forced to abandon when the program terminates at the end of 2013.

The Working Group recognized that use of the Individual Health Coverage (IHC) Program would be the most efficient and expeditious method for New Jersey to establish and run our own PCIP. The New Jersey PCIP is named NJ Protect and offers individual coverage using New Jersey carriers residents know and trust, and accessing their discounts to further leverage the available funding. As part of the New Jersey contract with the federal government we negotiated a 30 percent discount for NJ Protect policies.
compared to “standard” policies sold in New Jersey. Horizon and AmeriHealth both agreed to participate. In retrospect, this was the correct decision. NJ Protect insured 849 New Jerseyans as of February 2012. Cumulatively, the program has served 1,304 New Jerseyans. Although this is lower than we expected, it is much higher than in the two guaranteed-issue states that allowed GEHA to run their programs: Massachusetts had four persons covered and Vermont had no one covered as of November 30, 2011. At the same time, while enrollment has been lower than anticipated in New Jersey, the cost per insured individual has been higher than anticipated.

Health Insurance Market Reforms

Many of the provisions of the ACA affecting commercial insurance incorporate or are variations of requirements that have long existed in the New Jersey individual and small employer markets. These include:

- guaranteed availability of coverage to every small employer and individual with periodic (annual) open enrollments;
- guaranteed renewability;
- prohibition of discrimination based on health status and claims history;
- modified community rating;
- plan standardization;
- a minimum medical loss ratio (MLR) of 80 percent in the individual and small employer markets, subject to a rebate of premiums as necessary to obtain an 80 percent MLR;
- continuation of coverage for certain dependents under group plans after they reach a plan’s limiting age; and
- requiring carriers to use standardized application forms for health insurance plans.

Currently, New Jersey has in place the IHC Program, and the Small Employer Health Coverage (SEH) Program, both of which are in, but not of, the Department. Each program operates separately under the authority of a Board of Directors, although certain aspects are administered directly by the Department. The existence of these Boards has been described as an “exchange-like structure.”

Compliance with the insurance market reforms under Subtitles A and C of the ACA nevertheless did and will require some additional changes. Thus far:

- The Department has provided information on its website (at [http://www.state.nj.us/dobi/division_consumers/du31.html](http://www.state.nj.us/dobi/division_consumers/du31.html)) to explain how the federally-required “dependent coverage to age 26” requirements impact the New Jersey “dependent under 31” requirements contained in P.L.2008, c.38.
- New Jersey has had a longstanding requirement that carriers offer internal appeals consistent with 26 C.F.R. 2560.503-1, and provide access to an external appeals mechanism (available under a Department contract with multiple vendors). The
Department adopted amendments on January 12, 2012 to those rules necessary to bring its appeal mechanism into compliance as federal standards. The adoption can be accessed here: http://www.state.nj.us/dobi/proposed/ad120206a.pdf

- The IHC Board promulgated regulations on October 4, 2010 to bring the standard plans into conformance with the ACA by eliminating the pre-existing condition exclusion for children under 19 and addressing coverage for dependents to age 26. The adoptions can be found here: http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/ad10_ihc50.pdf and http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/ad10_ihcbc.pdf.

- The SEH Board promulgated regulations on November 18, 2010 to bring the standard plans into conformance with the ACA. The adoption can be found here: http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/sez2010/adoptsummary.pdf.

- With the more expansive definition for rescission established by federal regulation, some changes were required to be made to New Jersey’s existing standard plan language for small employers. The adoption can be accessed here: http://www.state.nj.us/dobi/division_insurance/ihcseh/rules/ppaca1111/adopt120118.pdf.

- The Department sought and received a determination from the US Department of Health and Human Services (HHS) that its rate review program is effective.

- New Jersey requested and received a waiver of the annual limits requirements enabling the statutorily mandated basic and essential Plan to continue to be an available option for individual market consumers. The waiver will allow such plans to continue until December 31, 2013.

**Actions New Jersey Will Need to Undertake to Implement Requirements of the Affordable Care Act (ACA)**

If the United States Supreme Court upholds the ACA as currently constituted, changes that will be required effective January 1, 2014 include:

- Sale of Qualified Health Plans through a Health Insurance Exchange. If New Jersey decides to establish a State-based Exchange, this will require setting up the Exchange. If the State decides to use a federally-facilitated Exchange, this will require deciding which functions the State will retain, if any, and which federal functionality to use, and creating all required interfaces between the State and federal government. Details are not yet available from the federal government on what options will be available or at what cost;

- Elimination of any option to have a pre-existing condition period for adults;

- Amending rating restrictions in the individual market from a rate band of 3.5:1 to 3:1;

- Reducing permissible waiting periods for group coverage to no more than 90 days;

- Removal of gender as a rating factor for small employer coverage;

- Reconciling state requirements with conflicting federal requirements on various matters including the methodology for calculating MLR;
- Revisions to the Basic & Essential (B&E) plan design. The B&E plan, available in the individual market, is a legislatively-defined product with significant benefit and coverage limitations, for which New Jersey currently has a waiver from the ACA requirements related to annual limitations on essential benefits. The B&E plan either will have to be revised to eliminate prohibited annual limits, or become a catastrophic plan if it is to be available through the health insurance exchange. Action may depend upon further federal guidance;
  - Operation of a reinsurance program; and
  - Operation of a risk adjustment program.

**Federal Exchange Planning Grant: $1.23 million; October 2010 thru March 2012**

To facilitate state planning and decision-making, HHS awarded the Department a $1 million, one-year Federal Exchange Planning Grant in October 2010. On December 22, 2011, the Department received an additional $223,186 to enable KPMG to complete its “gap analysis” (described below) and an extension of the grant period until March 31, 2012. This grant has been used as detailed below for:
  - stakeholder input;
  - a series of research papers on issues pertaining to the design of an Exchange; and
  - an analysis by KPMG of the gap between New Jersey’s existing information technology and other resources and what else would be needed to run a Health Insurance Exchange.

**Stakeholder Input**

Using part of the $1 million federal grant, the Department commissioned the Rutgers Center for State Health Policy (CSHP) to conduct stakeholder outreach as required by the ACA. From February to April 2011, CSHP moderated a series of 13 stakeholder forums to gather input on the design of a possible State-run Exchange from employers, health care providers, consumer and patient advocates, insurers and brokers. These forums were held throughout the state (Montclair, New Brunswick, Trenton and Camden) and were attended by 152 participants. Members of the Working Group attended all forums as observers.

CSHP later emailed an online survey regarding the design of an Exchange to organizations that participated in the forums. This survey was completed by 618 respondents. Rutgers CSHP compiled the responses from both the forums and online survey and published them in a three-volume report on its website at [http://www.cshp.rutgers.edu/](http://www.cshp.rutgers.edu/).

On November 15, 2011, CSHP moderated a “wrap-up” forum for all groups of stakeholders using an Exchange governance model proposed by Seton Hall University Law School Professor John Jacobi as the basis for discussion. Members of the Working Group attended this session as participants. CSHP summarized this discussion and published the results on its website in December 2011 at [http://www.cshp.rutgers.edu/](http://www.cshp.rutgers.edu/).

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1 Professor Jacobi's research was funded by the Robert Wood Johnson Foundation. His paper, *Health Insurance Exchanges: Governance Issues for New Jersey*, is also posted on the Rutgers CSHP Website.
Research Papers

The Department’s memorandum of understanding with CSHP also required it to complete a series of research papers on issues related to the design and operation of a State-run Health Insurance Exchange. CSHP has completed the following papers and published on their website:

- Health Insurance Status in New Jersey After Implementation of the Affordable Care Act;
- The Basic Health Plan Option in New Jersey;
- Combining New Jersey’s Individual and Small Group Health Insurance Risk Pools;
- Examining a Defined Contribution Strategy in the SHOP\(^2\) Exchange;
- Incorporating Quality Measures in Health Insurance Exchange Ratings of Health Plans; and

The following research papers are in progress:

- The ACA and MLR: Federal and State Methodologies;
- Risk Selection;
- Network Adequacy;
- Federal Methodologies for Rate-Banding; and
- Requirements for Redeterminations and Tax Credits.

Gap Analysis

Through a competitive process (Request for Quotations), the Department chose the consulting firm KPMG to analyze the gap between New Jersey’s existing information technology (IT) and business operations and what else would be needed to run a Health Insurance Exchange and develop a plan to bridge that gap. The following reports were commissioned:

- IT Gap Analysis
- IT Blueprint
- IT Budget and Roadmap
- Business and Operational Plan (includes staffing needed to run an Exchange)
- Financing Plan (to make Exchange self-sustaining by January 1, 2015)
- Stakeholder Education and Outreach Campaign

Federal “Level One” Exchange Funding Grant – $7.67 million

On February 22, 2012, HHS awarded the Department with a federal “Level One” Exchange Grant for the full amount requested ($7.67 million) to continue planning for a potential State-run Exchange, and for activities that may be undertaken by the State under a Federally-facilitated Exchange. The State is not obligated to run its own Exchange as a

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\(^2\) Small Business Health Options Program
condition of receipt of this grant, and the Governor has expressed a desire to limit the expenditure of funds before the Supreme Court rules on the constitutionality of the ACA. The Department intends to use the bulk of this funding to retain consultants to:

- Develop standards for the certification of plans that are “qualified” to sell on the Exchange (this is a mandatory function of Exchanges under the ACA, and may be a permissible state function under a federally-facilitated Exchange);
- Perform an actuarial analysis of New Jersey's options for selecting an Essential Health Benefits Benchmark Plan (states will have the option of making this selection for 2014-2015 without regard to state or federal exchanges);
- Provide support for research and recommendation of the best options for implementing risk adjustment and reinsurance programs, including whether to establish state programs or use federal programs;
- Explore opportunities to share Exchange services with other state programs (e.g., Medicaid);
- Develop Exchange IT requirements in sufficient detail to write specifications for a vendor and an application for federal “Level Two” funding (which would provide 100 percent federal funding to build an Exchange during 2014); and
- Develop a detailed financial management structure for the Exchange.

I trust that the foregoing is responsive to your inquiries. Please advise if you require any additional information.

Very truly yours,

[Signature]

Kenneth E. Kobylinski
Acting Commissioner