

Congress of the United States
Washington, DC 20515

May 24, 2016

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

Dear Mr. Slavitt:

As the Centers for Medicare and Medicaid Services (CMS) develops upcoming rulemaking for Section 603 of the Bipartisan Budget Act of 2015, "Treatment of off-campus outpatient departments of a provider," we would like to stress the importance of implementing this section in a way that protects patients' access to care and provides predictability for hospitals. As you plan for implementation of Section 603, there are a number of areas of flexibility we urge you to include.

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 must take a longer view in their strategic planning to meet the needs of a changing population, including opportunities to develop and expand needed services as patient-care needs shift. 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 hope you will recognize 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.

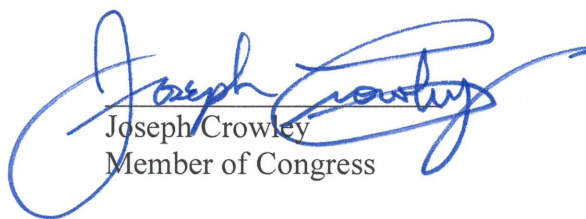
Lastly, current regulations define “on-campus” as buildings within 250 yards of the main buildings of the hospital or other buildings that the CMS regional office determines, on a case-by-case basis, to be part of the hospital campus. Emphasizing the discretion of regional offices is important because 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.

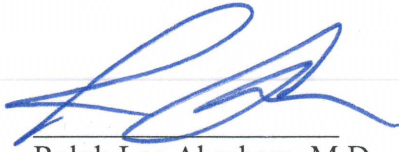
Sincerely,



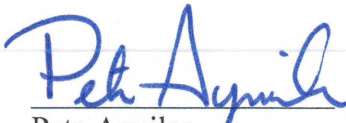
Devin Nunes
Member of Congress



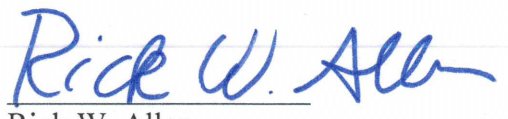
Joseph Crowley
Member of Congress



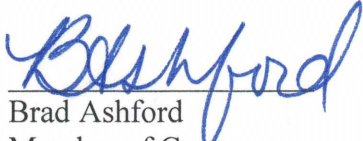
Ralph Lee Abraham, M.D.
Member of Congress



Pete Aguilar
Member of Congress



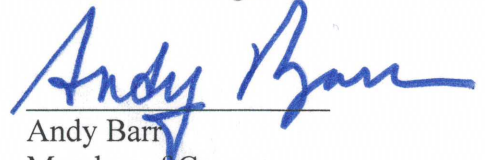
Rick W. Allen
Member of Congress



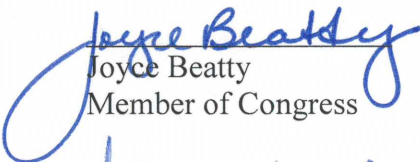
Brad Ashford
Member of Congress



Lou Barletta
Member of Congress



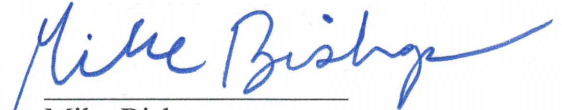
Andy Barr
Member of Congress



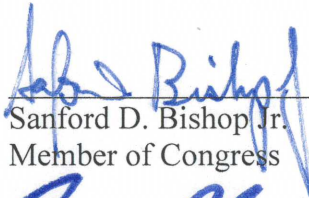
Joyce Beatty
Member of Congress



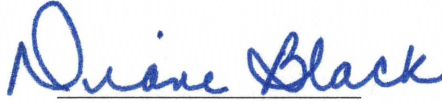
Ami Bera
Member of Congress



Mike Bishop
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Sanford D. Bishop Jr.
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Diane Black
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Rod Blum
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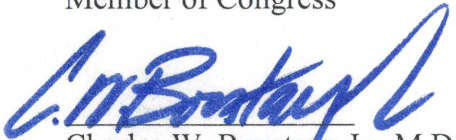
Earl Blumenauer
Member of Congress



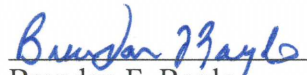
Suzanne Bonamici
Member of Congress



Mike Bost
Member of Congress



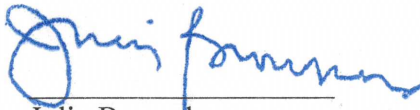
Charles W. Boustany Jr., M.D.
Member of Congress



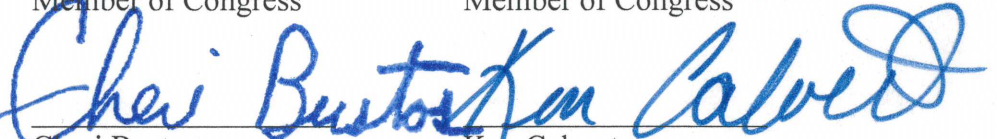
Brendan F. Boyle
Member of Congress



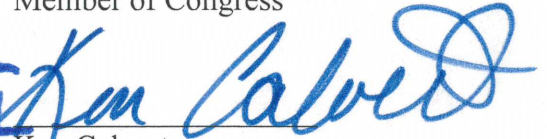
Robert A. Brady
Member of Congress



Julia Brownley
Member of Congress



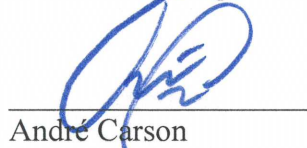
Cheri Bustos
Member of Congress




Ken Calvert
Member of Congress



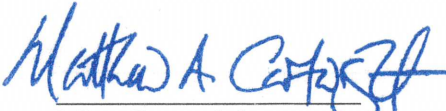
Lois Capps
Member of Congress



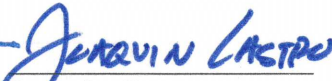
André Carson
Member of Congress



Earl L. "Buddy" Carter
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Matt Cartwright
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Jim Costa
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John Abney Culberson
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Rodney Davis
Rodney Davis
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Susan A. Davis
Susan A. Davis
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Peter A. DeFazio
Peter A. DeFazio
Member of Congress

Diana DeGette
Diana DeGette
Member of Congress

Suzan K. DelBene
Suzan K. DelBene
Member of Congress

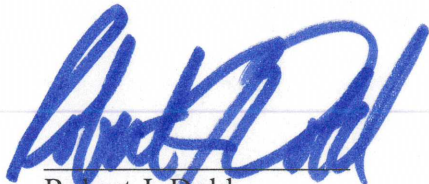
Jeff Denham
Jeff Denham
Member of Congress

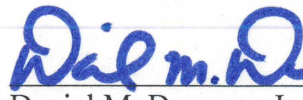
Charles W. Dent
Charles W. Dent
Member of Congress

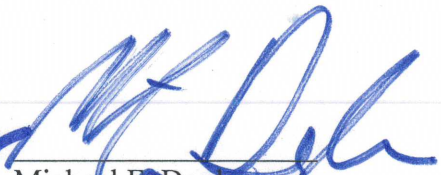
Mark DeSaulnier
Mark DeSaulnier
Member of Congress

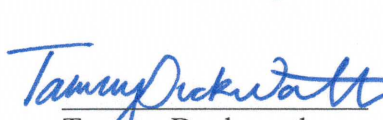
Scott DesJarlais
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Member of Congress

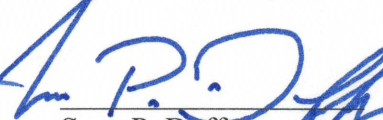
Debbie Dingell
Debbie Dingell
Member of Congress

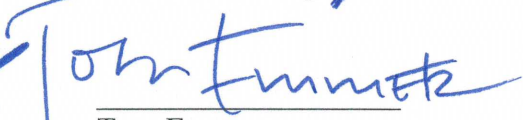

Robert J. Dold
Member of Congress

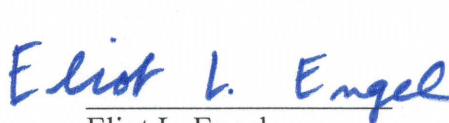

Daniel M. Donovan Jr.
Member of Congress

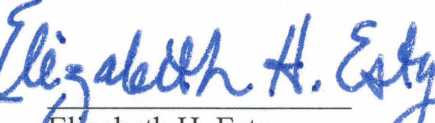

Michael F. Doyle
Member of Congress

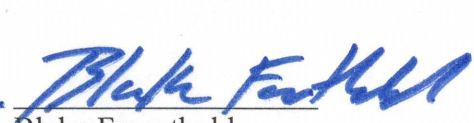

Tammy Duckworth
Member of Congress

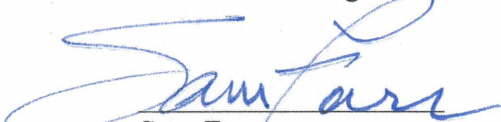

Sean P. Duffy
Member of Congress

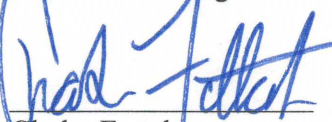

Tom Emmer
Member of Congress

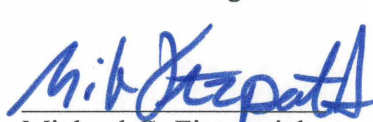

Eliot L. Engel
Member of Congress

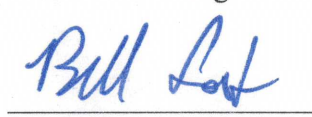

Elizabeth H. Esty
Member of Congress

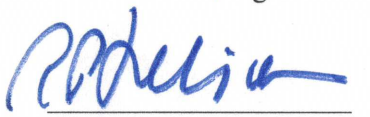

Blake Farenthold
Member of Congress

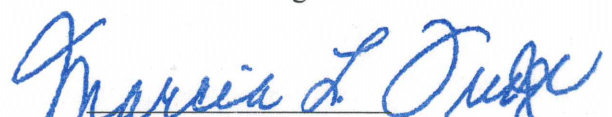

Sam Farr
Member of Congress

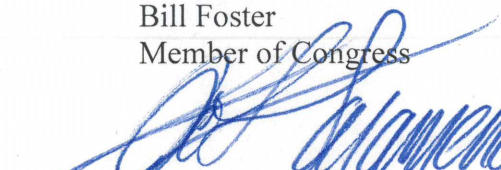

Chaka Fattah
Member of Congress

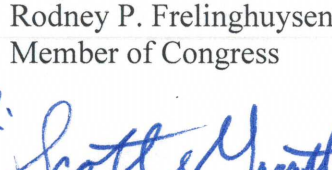

Michael G. Fitzpatrick
Member of Congress

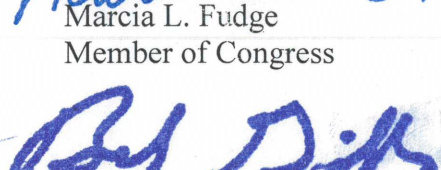

Bill Foster
Member of Congress



Rodney P. Frelinghuysen
Member of Congress

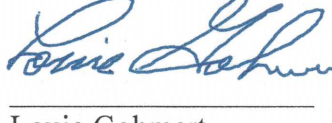

Marcia L. Fudge
Member of Congress

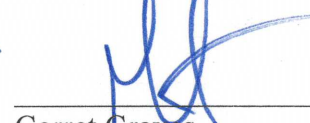

John Garamendi
Member of Congress

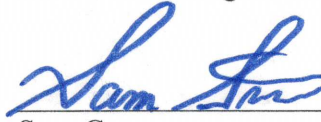

Scott Garrett
Member of Congress

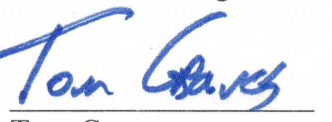

Bob Gibbs
Member of Congress



Christopher P. Gibson
Member of Congress

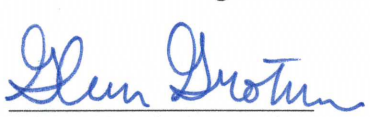

Louie Gohmert
Member of Congress

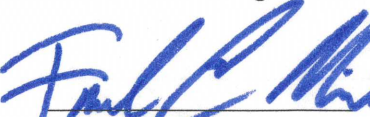

Garret Graves
Member of Congress

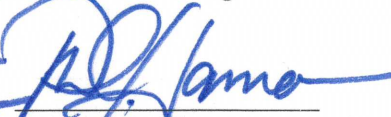

Sam Graves
Member of Congress


Tom Graves
Member of Congress


Al Green
Member of Congress


Glenn Grothman
Member of Congress


Frank C. Guinta
Member of Congress


Richard L. Hanna
Member of Congress

Gregg Harper

Gregg Harper
Member of Congress

Denny Heck

Denny Heck
Member of Congress

Joe Heck

Joe Heck, D.O.
Member of Congress

Jaime Herrera Beutler

Jaime Herrera Beutler
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Jody Hice

Jody B. Hice
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Brian Higgins

Brian Higgins
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French J. Hill

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Rubén Hinojosa

Rubén Hinojosa
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George Holding

George Holding
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Tim Huelskamp
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Jared Huffman

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Will Hurd

Will Hurd
Member of Congress

Steve Israel

Steve Israel
Member of Congress

Sheila Jackson Lee

Sheila Jackson Lee
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Hakeem S. Jeffries
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Evan H. Jenkins

Evan H. Jenkins
Member of Congress

Lynn Jenkins, CPA

Lynn Jenkins, CPA
Member of Congress

Eddie Bernice Johnson

Eddie Bernice Johnson
Member of Congress

Henry C. "Hank" Johnson Jr.

Henry C. "Hank" Johnson Jr.
Member of Congress

David P. Joyce

David P. Joyce
Member of Congress

John Katko

John Katko
Member of Congress

William R. Keating

William R. Keating
Member of Congress

Mike Kelly

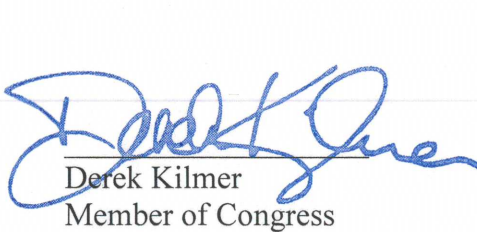
Mike Kelly
Member of Congress

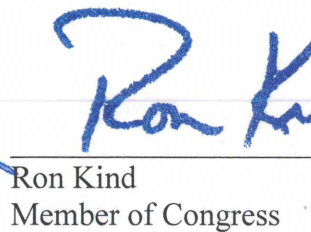
Trent Kelly

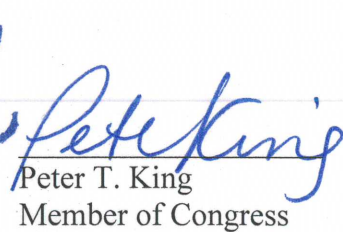
Trent Kelly
Member of Congress

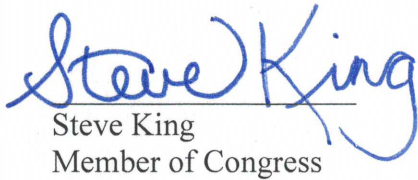
Daniel T. Kildee

Daniel T. Kildee
Member of Congress

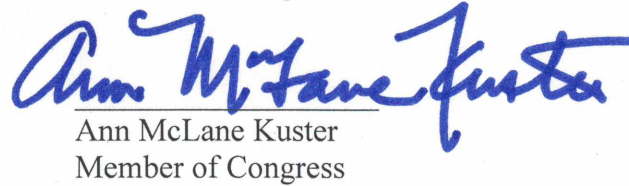

Derek Kilmer
Member of Congress

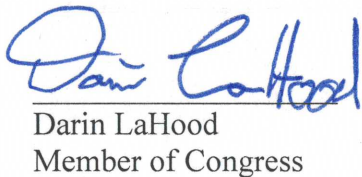

Ron Kind
Member of Congress

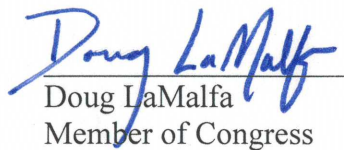

Peter T. King
Member of Congress

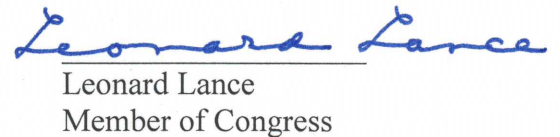

Steve King
Member of Congress

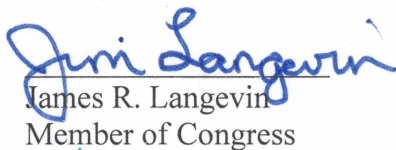

Ann Kirkpatrick
Member of Congress

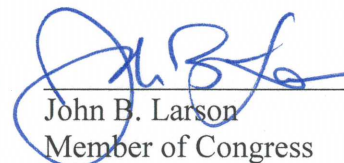

Ann McLane Kuster
Member of Congress


Darin LaHood
Member of Congress

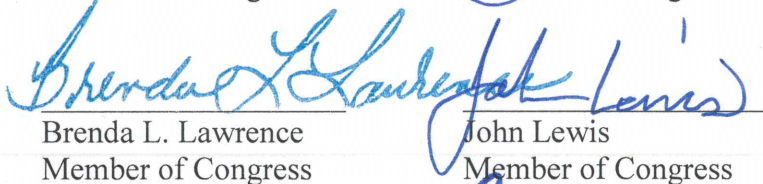

Doug LaMalfa
Member of Congress

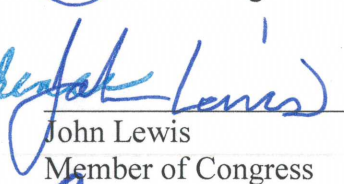

Leonard Lance
Member of Congress

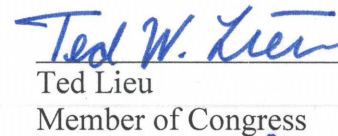

James R. Langevin
Member of Congress

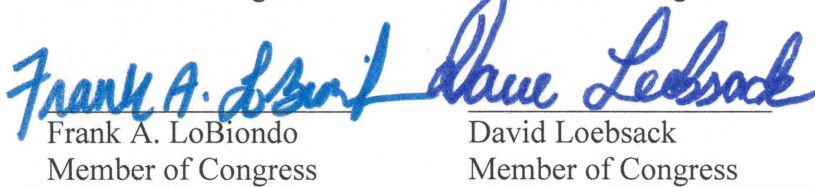

John B. Larson
Member of Congress

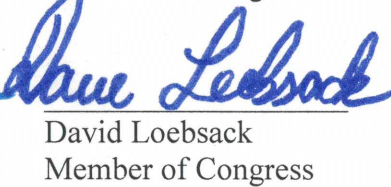

Robert E. Latta
Member of Congress

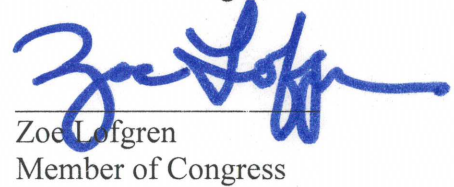

Brenda L. Lawrence
Member of Congress

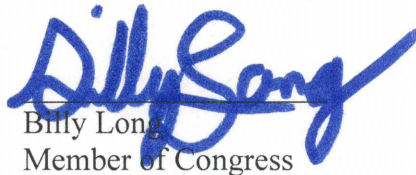

John Lewis
Member of Congress

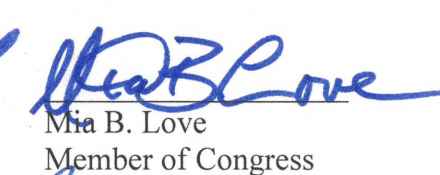

Ted Lieu
Member of Congress

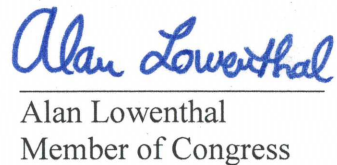

Frank A. LoBiondo
Member of Congress

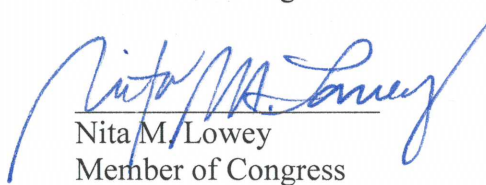

David Loebsack
Member of Congress

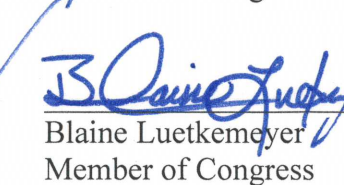

Zoe Lofgren
Member of Congress

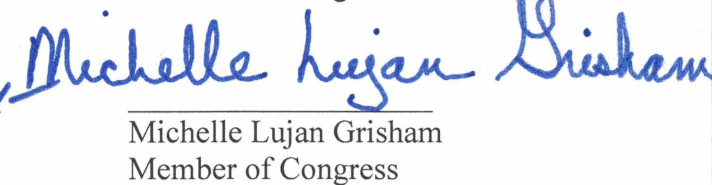

Billy Long
Member of Congress

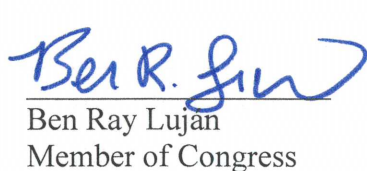

Mia B. Love
Member of Congress

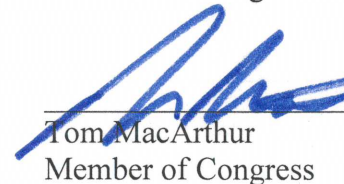

Alan Lowenthal
Member of Congress

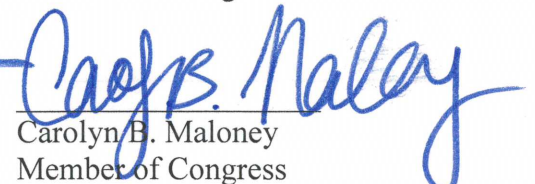

Nita M. Lowey
Member of Congress


Blaine Luetkemeyer
Member of Congress


Michelle Lujan Grisham
Member of Congress


Ben Ray Lujan
Member of Congress


Tom MacArthur
Member of Congress


Carolyn B. Maloney
Member of Congress

Sean Patrick Maloney
Member of Congress

Kenny Marchant
Member of Congress

Tom Marino
Member of Congress

Doris Matsui
Member of Congress

Michael T. McCaul
Member of Congress

Betty McCollum
Member of Congress

James P. McGovern
Member of Congress

Mark Meadows
Member of Congress

Patrick Meehan
Member of Congress

Gregory W. Meeks
Member of Congress

Grace Meng
Member of Congress

Candice S. Miller
Member of Congress

John R. Moolenaar
Member of Congress

Gwen Moore
Member of Congress

Seth Moulton
Member of Congress

Patrick E. Murphy
Member of Congress

Jerrold Nadler
Member of Congress

Grace F. Napolitano
Member of Congress

Richard E. Neal
Member of Congress

Kristi L. Noem
Member of Congress

Donald Norcross
Member of Congress

Steven M. Palazzo
Member of Congress

Bill Pascrell Jr.
Member of Congress

Erik Paulsen
Member of Congress

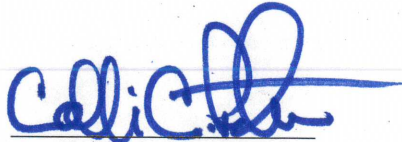
Donald M. Payne Jr.
Member of Congress

Stevan Pearce
Member of Congress

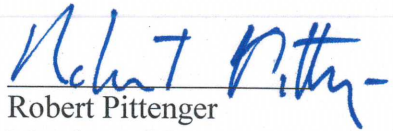
Scott Perry
Member of Congress



Scott H. Peters
Member of Congress



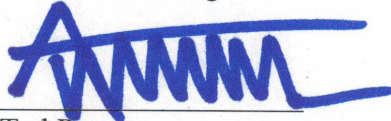
Collin C. Peterson
Member of Congress



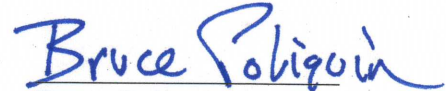
Robert Pittenger
Member of Congress



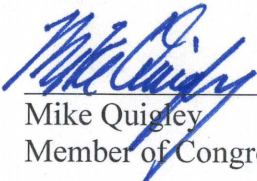
Mark Pocan
Member of Congress



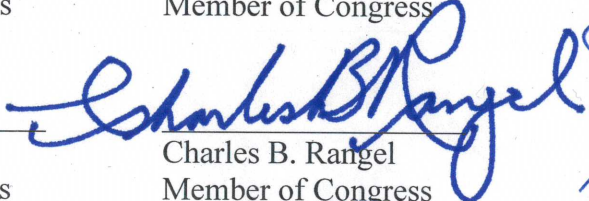
Ted Poe
Member of Congress



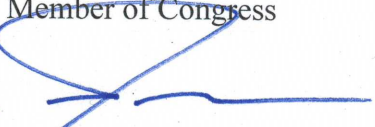
Bruce Poliquin
Member of Congress



Mike Quigley
Member of Congress



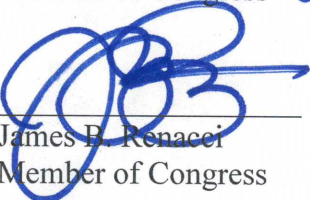
Charles B. Rangel
Member of Congress



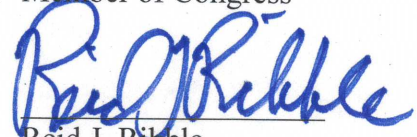
Tom Reed
Member of Congress



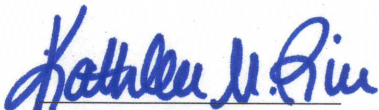
David G. Reichert
Member of Congress



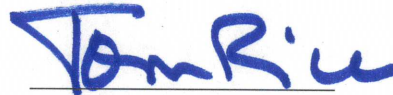
James B. Renacci
Member of Congress



Reid J. Ribble
Member of Congress



Kathleen M. Rice
Member of Congress



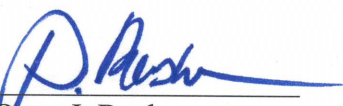
Tom Rice
Member of Congress



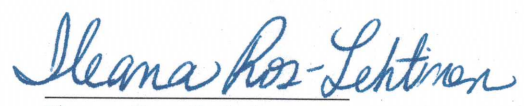
Cedric L. Richmond
Member of Congress



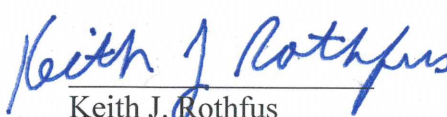
Harold Rogers
Member of Congress



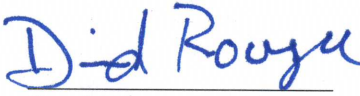
Peter J. Roskam
Member of Congress



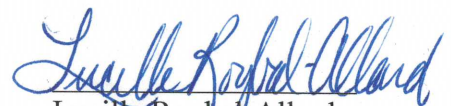
Ileana Ros-Lehtinen
Member of Congress



Keith J. Rothfus
Member of Congress



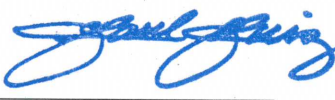
David Rouzer
Member of Congress



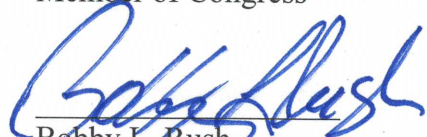
Lucille Roybal-Allard
Member of Congress



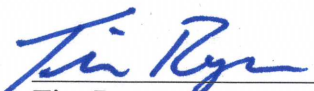
Edward R. Royce
Member of Congress



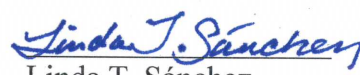
Raul Ruiz
Member of Congress



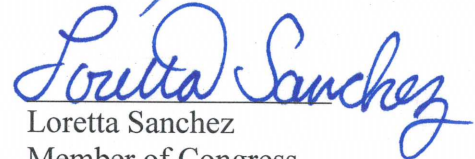
Bobby L. Rush
Member of Congress



Tim Ryan
Member of Congress



Linda T. Sánchez
Member of Congress



Loretta Sanchez
Member of Congress

Adam B. Schiff
Adam B. Schiff
Member of Congress

Kurt Schrader
Kurt Schrader
Member of Congress

David Scott
David Scott
Member of Congress

F. James Sensenbrenner Jr.
F. James Sensenbrenner Jr.
Member of Congress

José E. Serrano
José E. Serrano
Member of Congress

Pete Sessions
Pete Sessions
Member of Congress

Bill Shuster
Bill Shuster
Member of Congress

Michael K. Simpson
Michael K. Simpson
Member of Congress

Kyrsten Sinema
Kyrsten Sinema
Member of Congress

Albio Sires
Albio Sires
Member of Congress

Louise McIntosh Slaughter
Louise McIntosh Slaughter
Member of Congress

Adrian Smith
Adrian Smith
Member of Congress

Christopher H. Smith
Christopher H. Smith
Member of Congress

Jason Smith
Jason Smith
Member of Congress

Lamar Smith
Lamar Smith
Member of Congress

Elise M. Stefanik
Elise M. 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

Mark Takai
Mark Takai
Member of Congress

Bennie G. Thompson
Bennie G. Thompson
Member of Congress

Glenn 'GT' Thompson
Glenn 'GT' Thompson
Member of Congress

Mike Thompson
Mike Thompson
Member of Congress

Paul Tonko
Paul Tonko
Member of Congress

Norma J. Torres
Norma J. Torres
Member of Congress

Dave A. Trott
Dave A. 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

Filemon Vela

Filemon Vela
Member of Congress

Nydia M. Velázquez

Nydia M. Velázquez
Member of Congress

Debbie Wasserman Schultz

Debbie Wasserman Schultz
Member of Congress

Ann Wagner

Ann Wagner
Member of Congress

Timothy J. Walz

Timothy J. Walz
Member of Congress

Bonnie Watson Coleman

Bonnie Watson Coleman
Member of Congress

Peter Welch

Peter Welch
Member of Congress

Brad R. Wenstrup

Brad R. Wenstrup
Member of Congress

Lynn A. Westmoreland

Lynn A. Westmoreland
Member of Congress

Roger Williams

Roger Williams
Member of Congress

Frederica S. Wilson

Frederica S. Wilson
Member of Congress

Robert J. Wittman

Robert J. Wittman
Member of Congress

Steve Womack

Steve Womack
Member of Congress

Ryan K. Zinke

Ryan K. Zinke
Member of Congress