



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2014-21

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Dear Mr. Minor:

We are responding to your advisory opinion request on behalf of Cambia Health Solutions, Inc. (“Cambia”). Cambia asks the Commission to find that Cambia’s separate segregated fund (“SSF”), Cambia Health Solutions, Inc. PAC, is no longer affiliated with the SSF of the Blue Cross and Blue Shield Association (“Blue Cross”) under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (formerly 2 U.S.C. §§ 431-457) (the “Act” or “FECA”), and Commission regulations. According to the request, although Cambia and Blue Cross historically have treated their SSFs as affiliated PACs, Cambia believes that they are no longer affiliated because the business relationship between Cambia and Blue Cross has “evolved over time.” Advisory Opinion Request at 1 (Dec. 23, 2014) (“AOR”).

The Commission concludes that Cambia’s SSF is no longer affiliated with Blue Cross’s SSF.

Background

The facts presented in this advisory opinion are based on your letter and attachments received on December 23, 2014, and public disclosure reports filed with the Commission.

Cambia is a nonstock health insurance corporation. Cambia’s purpose is “to engage in health promotion and improvement activities; to manage the activities of owned or managed health care service plans, health insurance plans, and health maintenance organizations; and to engage in any activity permitted by the Oregon Nonprofit Corporations law.” *Restated Articles of Incorporation of Cambia Health Solutions, Inc.*, Art. II. Cambia operates as a nonprofit corporation without members. *Cambia Health Solutions, Inc. Restated Bylaws*, Art. I

(“*Bylaws*”). Neither Cambia nor Blue Cross issues voting stock or securities, and neither Blue Cross nor Cambia played any role in the formation of the other.

Cambia is governed by a board of 15 directors. AOR at 2. Each director is nominated by a majority vote of the Organizational and Governance Committee of the Board of Directors and elected for a three-year term by a majority vote of the Board of Directors.¹ The directors’ terms are staggered, with approximately one-third expiring each year. *Bylaws*, Art. II, Sec. 5. Directors can be removed from office only with the approval of at least two-thirds of Cambia’s directors. *Id.*, Art. II, Sec. 1. None of Cambia’s directors are associated with Blue Cross. AOR at 6. Because it is a Blue Cross licensee (as discussed below), Cambia controls two positions on Blue Cross’s 38-member board of directors: Cambia’s CEO and the CEO of Regence BlueShield of Idaho, a Cambia-controlled affiliate (who reports to Cambia’s CEO), are members of Blue Cross’s board of directors, hold the same voting rights and privileges as each other member of the board, and maintain no special positions with respect to the Blue Cross board. *See* AOR at 6 n.1. Blue Cross does not have authority to hire or otherwise control any officers or employees of Cambia, and Cambia does not have authority to hire or otherwise control any officers or employees of Blue Cross. AOR at 6.

Cambia is engaged in the sale and management of health insurance marketed under licensing agreements between Cambia and Blue Cross. These licensing agreements grant Cambia the rights to market and sell products under the Blue Cross names and marks in Washington, Utah, Idaho, and Oregon. *See id.* at 2. These agreements permit Cambia to offer non-Blue Cross branded health insurance products in any state, and Cambia operates subsidiaries that sell such products in Washington, Alaska, Idaho, Utah, Oregon, Wyoming, and Montana, with plans to expand to California. *Id.* at 3.

With respect to its sales of health insurance products marketed under the Blue Cross marks, Cambia’s license agreements with Blue Cross impose certain obligations on Cambia. Cambia must follow certain Blue Cross policies, participate in certain Blue Cross programs to facilitate portability and claims processing, and satisfy certain financial benchmarks. *Id.* at 2. In the four designated states, at least 80% of the revenue that Cambia derives from health care plans must be associated with Blue Cross products. Nationwide, at least two-thirds of Cambia’s revenue associated with health care plans must be derived from Blue Cross products. *Id.*

Most of Cambia’s business is conducted under the Blue Cross marks, *see id.* at 7, but “Cambia has expanded aggressively into other businesses.” *Id.* at 3. Cambia now has more than 20 different businesses with customers in all 50 states. *Id.* at 1. Some of these other business activities compete directly with other Blue Cross licensees, and some are non-health-insurance activities such as health care information technology and software development, retail health care, pharmacy benefit management, and other types of insurance such as life, dental, vision, and disability. *See id.* In addition, Cambia’s charitable arm, a grant-making organization that promotes patient-centered and economically sustainable health care, has reduced its association

¹ The exception is Cambia’s CEO, who serves as the sole inside director, and whose term as director is concurrent with his or her term as CEO. *Bylaws*, Art. II, Sec. 2.

with Blue Cross by terminating its Blue Cross license and ending the use of Blue Cross marks. *Id.* at 4.

Cambia has no members, and therefore it has no overlapping members with Blue Cross. *Id.* at 6. Cambia and Blue Cross have no common employees, and Cambia employs only two individuals who were previously employed by Blue Cross, out of more than 5,000 Cambia employees in total. *Id.* at 7. Cambia is not aware of any former Cambia employees now employed by Blue Cross. *Id.*

Blue Cross provides limited administrative support to Cambia, related to maintaining and protecting the Blue Cross marks. *Id.* Blue Cross also offers to Cambia (and Blue Cross's other licensees) certain voluntary contractual services such as marketing and arrangements with outside vendors, but the request states that these services and arrangements are "insubstantial." Whether to purchase such services or take part in such arrangements is determined by Cambia, and all are arm's-length transactions. *Id.* at 8.

According to the request, Cambia's SSF and Blue Cross's SSF were assumed to be affiliated when Cambia PAC's predecessor registered with the Commission in 1991. *Id.* at 1. The request states that although Cambia's SSF and Blue Cross's SSF interact as required to ensure that their shared contribution limits are not exceeded, the relationship between the two SSFs is limited. In recent years Cambia's SSF has contributed to Blue Cross's SSF once annually, but all decisions regarding contributions made by Cambia's SSF are made only by Cambia executives. *Id.* at 8. Cambia has its own in-house government affairs personnel, and the request states that Cambia often pursues government affairs objectives that are not consistent with Blue Cross's interests. *Id.* at 8-9. In the 2013-14 election cycle, according to the request, Cambia's SSF and Blue Cross's SSF made a combined 450 contributions to 278 different candidates and political committees, but only nine candidates or committees received contributions from both SSFs. Of the 350 individuals who made itemized contributions to either Cambia's SSF or Blue Cross's SSF, none made contributions to both SSFs. *Id.* at 9. Neither Cambia nor Blue Cross solicits contributions to its SSF from the other's solicitable class. *Id.*

Question Presented

Does Cambia's SSF continue to be affiliated with Blue Cross's SSF?

Legal Analysis and Conclusions

No, Cambia's SSF is no longer affiliated with Blue Cross's SSF.

Political committees, including SSFs, are "affiliated" if they are established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons, including any parent, subsidiary, branch, division, department, or local unit thereof. *See* 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). For purposes of the Act's contribution limits, contributions made to or by affiliated political committees are considered to have been made to or by a single political

committee. *See* 52 U.S.C. § 30116(a)(5) (formerly 2 U.S.C. § 441a(a)(5)); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1).

Commission regulations identify certain committees that are *per se* affiliated, such as those established, financed, maintained, or controlled by a single corporation and its subsidiaries. *See* 11 C.F.R. §§ 100.5(g)(3)(i), 110.3(a)(2)(i). None of these criteria are met here.

In the absence of *per se* affiliation, the Commission examines “the relationship between organizations that sponsor committees, between the committees themselves, [and] between one sponsoring organization and a committee established by another organization to determine whether committees are affiliated.” *See* 11 C.F.R. § 100.5(g)(4)(i). Commission regulations provide a non-exhaustive list of ten “circumstantial factors” to be considered “in the context of the overall relationship” in order to determine whether the respective SSFs are appropriately considered affiliated. *See* 11 C.F.R. §§ 100.5(g)(4)(i)-(ii), 110.3(a)(3)(i)-(ii); Advisory Opinion 2014-11 (Health Care Service Corporation Employees’ Political Action Committee) at 4 (“HCSC”); Advisory Opinion 1999-39 (WellPAC) at 2; *see also* Advisory Opinion 2009-18 (Penske); Advisory Opinion 2007-12 (Tyco).

In Advisory Opinion 1990-22 (Blue Cross), the Commission concluded that Blue Cross was affiliated with each of its licensed plans in the United States. Although Cambia is such a plan, its request states that on balance, because of changed circumstances, Cambia and Blue Cross are no longer properly deemed affiliated. *Cf.* Advisory Opinion 2014-11 (HCSC) (finding Blue Cross licensee’s SSF to be no longer affiliated with Blue Cross’s SSF due to changed circumstances); Advisory Opinion 1999-39 (WellPAC) (same). The Commission considers the relevant factors in turn.

(A) *Controlling Interest*

This factor asks whether a sponsoring organization owns a controlling interest in the voting stock or securities of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(A), 110.3(a)(3)(ii)(A). As neither Cambia nor Blue Cross issues voting stock or securities, neither entity owns such stock or securities in the other. The absence of such ownership weighs against finding that the entities’ SSFs are affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 4; Advisory Opinion 2007-13 (United American Nurses) at 7.

(B) *Governance*

This factor concerns whether a sponsoring organization has the authority or ability to direct or participate in the governance of the other sponsoring organization through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures. 11 C.F.R. §§ 100.5(g)(4)(ii)(B), 110.3(a)(3)(ii)(B).

Blue Cross has no voting rights in Cambia, and neither Blue Cross nor any of its other licensees maintains a seat on Cambia’s board. Blue Cross is not entitled to appoint any individuals to Cambia’s board.

As is true of every other Blue Cross licensee, Cambia's CEO is one of 38 members of Blue Cross's board of directors and holds the same voting rights and privileges as each other member of the board, maintaining no special positions with respect to the Blue Cross board. Cambia also controls a second position on Blue Cross's board by virtue of its control of Regence BlueShield of Idaho, which must maintain a separate Blue Cross license due to its ownership structure and therefore holds a separate seat on Blue Cross's board. That seat is held by Regence BlueShield of Idaho's CEO, who reports directly to a Cambia officer.

Blue Cross's complete absence of representation on Cambia's governing board and the very limited (2-in-38) role played by Cambia in Blue Cross's governing board weigh against finding that the entities' SSFs are affiliated. Advisory Opinion 2014-11 (HCSC) at 5; Advisory Opinion 1999-39 (WellPAC) at 4, 8.

(C) Hiring Authority

This factor concerns whether a sponsoring organization has the authority or ability to hire, appoint, demote, or otherwise control the officers or other decisionmaking employees of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(C), 110.3(a)(3)(ii)(C). Blue Cross has no authority over the hiring, appointment, or demotion of Cambia's officers, and Cambia has no such authority with regard to Blue Cross. The mutual lack of such authority weighs against finding that the entities' SSFs are affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 5; Advisory Opinion 2003-21 (Lehman Brothers) at 5.

(D) Common Membership

This factor considers whether a sponsoring organization has common or overlapping membership with the other sponsoring organization that indicates a formal or ongoing relationship between the sponsoring organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(D), 110.3(a)(3)(ii)(D). Cambia and Blue Cross have no overlapping members.² Accordingly, this factor supports finding the entities' SSFs not to be affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 5.

(E) Common Officers or Employees

This factor asks whether sponsoring organizations have common or overlapping officers or employees, indicating a formal or ongoing relationship between the organizations. 11 C.F.R. §§ 100.5(g)(4)(ii)(E), 110.3(a)(3)(ii)(E). Cambia and Blue Cross have no overlapping officers or employees, and thus this factor also weighs against finding that the entities' SSFs are affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 6; Advisory Opinion 1999-39 (WellPAC) at 7-8.

² Cambia and Regence BlueShield of Idaho, like other Blue Cross licensees, are required to "maintain [their] status as [members] in good standing of [Blue Cross]." This requirement appears to grant Cambia and Regence BlueShield of Idaho only 2 of 38 seats on Blue Cross's board of directors and so is, at most, a minor indication of a "formal or ongoing relationship" within the meaning of the regulation.

(F) Former Officers or Employees

This factor concerns whether a sponsoring organization has any members, officers, or employees who previously were members, officers, or employees of the other sponsoring organization, indicating a formal or ongoing relationship or the creation of a successor entity. 11 C.F.R. §§ 100.5(g)(4)(ii)(F), 110.3(a)(3)(ii)(F).

Cambia employs two former Blue Cross employees, both of whom have been employed by Cambia for at least ten years, out of more than 5,000 total employees. That such a small number of former Blue Cross employees are currently employed by Cambia and have been so employed for a decade does not suggest “a formal or ongoing relationship” within the meaning of 11 C.F.R. §§ 100.5(g)(4)(ii)(F) and 110.3(a)(3)(ii)(F). Again, this factor therefore weighs against finding that the entities’ SSFs are affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 6; Advisory Opinion 1999-39 (WellPAC) at 4, 8.

(G) Providing Funds or Goods

This factor considers whether a sponsoring organization provides funds or goods in a significant amount or on an ongoing basis to the other sponsoring organization or committee. 11 C.F.R. §§ 100.5(g)(4)(ii)(G), 110.3(a)(3)(ii)(G).

As explained above, Blue Cross provides Cambia with the exclusive right to use its marks within four states, as well as limited administrative support related to such use. In exchange, Cambia provides funds to Blue Cross, in the form of licensing and membership fees, and is contractually obligated to use the marks to derive 80 percent of its health insurance revenue in the four states and two-thirds of its health insurance revenue nationwide. Although Cambia has begun to diversify its business activities, the majority of its operations are conducted using the marks that Blue Cross provides. *See* AOR at 7. This factor therefore weighs in favor of finding Cambia’s and Blue Cross’s SSFs to be affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 6; Advisory Opinion 1999-39 (WellPAC) at 6-8.

(H) Arranging for the Provision of Funds or Goods

This factor concerns whether a sponsoring organization causes or arranges for funds or goods to be provided to the other sponsoring organization in a significant amount or on an ongoing basis. 11 C.F.R. §§ 100.5(g)(4)(ii)(H), 110.3(a)(3)(ii)(H). Blue Cross offers all of its licensees, including Cambia, certain voluntary contractual arrangements with nationwide vendors, such as airlines and telecommunications companies. The request states that “these services and arrangements are insubstantial.” AOR at 8. The Commission thus concludes that the arrangements that Blue Cross makes for Cambia to have the option of contracting with certain vendors do not weigh in favor of finding the entities’ SSFs to be affiliated under this factor. *See* Advisory Opinion 2014-11 (HCSC) at 6-7; Advisory Opinion 2002-11 (Mortgage Bankers) at 12.

(I) Formation

This factor involves whether a sponsoring organization had an active or significant role in the formation of the other sponsoring organization. 11 C.F.R. §§ 100.5(g)(4)(ii)(I), 110.3(a)(3)(ii)(I). Blue Cross played no role in the formation of Cambia: Cambia predated Blue Cross and was formed decades before Blue Cross was established. Nor did Cambia play a role in forming Blue Cross. These facts weigh against finding the SSFs to be affiliated. *See* Advisory Opinion 2014-11 (HCSC) at 7; Advisory Opinion 1999-39 (WellPAC) (finding Blue Cross licensee not affiliated where licensee was not formed solely to operate under their Blue Cross licenses).

(J) Contribution Patterns

This factor pertains to whether the sponsoring organizations or their committees have similar patterns of contributions or contributors that would indicate a formal or ongoing relationship between the sponsoring organizations or committees. 11 C.F.R. §§ 100.5(g)(4)(ii)(J), 110.3(a)(3)(ii)(J). Cambia's SSF has annually transferred some of its funds to Blue Cross's SSF in recent years, which would tend to suggest at least some ongoing relationship between the committees. The request states, however, that in the 2013-2014 election cycle, Cambia's SSF and Blue Cross's SSF combined contributed to more than 278 candidates and political committees, but only nine candidates or political committees received contributions from both of the SSFs. And the request further states that of the two SSFs' more than 350 combined itemized contributors during the 2013-2014 election cycle, no one person contributed to both of them. This lack of overlap in contributions made and received would tend to suggest that Cambia's SSF and Blue Cross's SSF are not affiliated entities. *See* Advisory Opinion 2014-11 (HCSC) at 7. On the whole, therefore, the Commission concludes that this factor weighs neither in favor of nor against a finding of affiliation.

Context of the Overall Relationship between Entities

In considering the foregoing circumstantial factors, the Commission examines the "context of [the] overall relationship" between the entities to determine whether they are properly considered affiliated. In the context of licensees and franchisees, the Commission generally has not found affiliation absent the circumstances indicating that "one entity exercises pervasive supervision and direction over the daily operations and business policies of another entity." *See* Advisory Opinion 1999-39 (WellPAC) at 7 (citing Advisory Opinion 1992-07 (H&R Block); Advisory Opinion 1985-07 (Anheuser-Busch)); Advisory Opinion 2014-11 (HCSC) at 7.

The "context of the overall relationship" shows that Cambia is now, and is continuing to become, substantially diversified beyond the health insurance products it markets under the licensing agreements with Blue Cross. In that respect, Cambia is similarly situated to the requestor in Advisory Opinion 2014-11 (HCSC), where the Commission determined that the SSF of Health Care Services Corporation, a Blue Cross licensee, was no longer affiliated with Blue Cross's SSF due to the same factors discussed above, such as the fact that Health Care Services Corporation was not required to offer all of its products under the Blue Cross marks and had

become engaged in various lines of business that were not affected by its agreements with Blue Cross. Advisory Opinion 2014-11 (HCSC) at 8. Furthermore, like Cambia, Health Care Services Corporation offered other types of insurance and operated subsidiaries that sometimes directly competed with Blue Cross licensed plans. *Id.* at 2, 8; *see also* Advisory Opinion 1999-39 (WellPAC) (determining that SSFs of WellPoint, a Blue Cross licensee, and Blue Cross were no longer affiliated, in part because WellPoint was not required to conduct its insurance and related businesses exclusively under the Blue Cross mark and conducted extensive business in those fields under a different business mark in direct competition with Blue Cross licensees).

Although Cambia's overall operations remain heavily tied to its use of the Blue Cross marks for the sale of health insurance products — a fact that alone would weigh in favor of finding the SSFs to be affiliated — the Commission has repeatedly determined that negotiated business arrangements between two entities do not by themselves necessarily rise to the level of affiliation. *See, e.g.*, Advisory Opinion 2014-11 (HCSC) at 8; Advisory Opinion 2012-21 (Primerica) at 11; Advisory Opinion 1996-23 (ITT). As was true in Advisory Opinion 2014-11 (HCSC) and Advisory Opinion 1999-39 (WellPAC), Cambia's ongoing relationship with and obligations to Blue Cross under the licensing agreements are outweighed by the absence of facts that support a finding of affiliation under any of the other factors in the Commission's regulations. Accordingly, the Commission concludes that Cambia's SSF and Blue Cross's SSF are no longer affiliated.³

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108 (formerly 2 U.S.C. § 437f). The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B) (formerly 2 U.S.C. § 437f). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law

³ The Commission emphasizes that this opinion is based on the specific facts presented in this request and that the Commission is not making a determination as to the relationship between Blue Cross and any other Blue Cross licensee. *See* 52 U.S.C. § 30108(c)(1) (formerly 2 U.S.C. § 437f(c)(1)).

The Commission also notes that when SSFs become disaffiliated, they no longer share limits on the receipt and making of contributions, and neither may solicit contributions from the restricted class of the other's organization. Furthermore, when making contributions after disaffiliation, SSFs must take into account the contributions they made prior to disaffiliation. *See Campaign Guide for Corporations and Labor Organizations* at 7; *see also* Advisory Opinion 2003-21 (Lehman Brothers); Advisory Opinion 2000-36 (Andersen Consulting PAC); Advisory Opinion 2000-28 (ASHA).

including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)

Ann M. Ravel