

Congress of the United States
Washington, DC 20510

November 20, 2013

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

Last year, we wrote to you regarding the Department of Health and Human Services' (HHS) implementation of the Consumer Operated and Oriented Plans (CO-OP) loan program, which gives loans to help create non-profit health insurance issuers. Recent events, including the rollout of the health care marketplace exchanges on October 1, have deepened our concerns about the success of CO-OPs and the probability of taxpayers being repaid for the \$2 billion that was loaned to these plans.

The Patient Protection and Affordable Care Act (PPACA) created the CO-OP loan program, which offers funding to non-profit health insurance issuers that offer qualified health plans in the individual and small group markets.¹ As of January 2, 2013, the Centers for Medicare & Medicaid Services (CMS) had awarded loans totaling \$1.98 billion in funding to 24 CO-OPs operating in 24 states.² The loans come in two forms: (1) startup loans, which assist with costs of establishing CO-OPs; and (2) solvency loans, which help CO-OPs meet state insurance solvency and reserve requirements.³

When we wrote to you in May 2012, we noted that there was little evidence that the CO-OP program would promote greater competition and lower costs in most state insurance markets, and we questioned whether HHS had significantly underestimated the financial risk that these entities pose to the Federal Treasury. The responses to our letter from CMS Administrator Marilyn Tavenner—which were delivered on your behalf more than 9 months after we sent our letter—did little to assure us that HHS or CMS was prepared to address these issues.

Indeed, a recent HHS Inspector General report identified many of the same issues that we discussed in our previous letter, including several immediate challenges: the “tight” 18-24 month window that CO-OPs had from receiving financing to being ready enroll consumers; market uncertainty; and the difficulty of quickly identifying and contracting with the right health care providers and vendors for key services.⁴

¹ PPACA, § 1332(a)(2). 45 C.F.R. § 156.515(c)(1).

² HHS Office of the Inspector General, “The Centers for Medicare & Medicaid Services Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed,” A-05-12-00043 (July 2013) at 2.

³ 45 C.F.R. § 156.505.

⁴ HHS Office of Inspector General, “Early Implementation of the Consumer Operated and Oriented Plan Loan Program,” OEI-01-12-00290 (July 2013) at 10.

Additionally, as of June 2013 – just four months before the October 1 exchange rollout – five of the CO-OPs had not yet been issued insurance licenses by their states.⁵

The HHS Inspector General issued a second report in July 2013 that raised even greater concerns about the viability of the CO-OP program.⁶ The Inspector General found “little evidence of private monetary support in any of the 16 applications” that the Inspector General reviewed – applications which were all approved for funding.⁷ Perhaps more troubling, the Inspector General found that “11 of 16 CO-OPs reported estimated startup expenditures in their applications that exceeded the total startup funding ultimately provided by CMS.”⁸ The Inspector General concluded that “there is a risk that CO-OPs could exhaust all startup loan funding before they are fully operational or before they earn sufficient operating income to be self-supporting” based on “unforeseen risks (such as limited enrollment) or barriers (such as uncertainty about operations of the State-based or federally facilitated marketplaces or a State’s denial of insurance licensure).”⁹

Although it has only been a few weeks since the health care exchange marketplace was launched, some of these fears have already been realized. In fact, *The Washington Post* reported that “the [exchange] problems, in particular the malfunctioning federal Web site, are hitting the co-ops hard because they depend on the exchanges for business.”¹⁰ The *Post* cited an internal review by Deloitte that uncovered financial problems in the Maryland, New York, and New Jersey CO-OPs. Moreover, the *Post* reported that after being denied a license by the state, the Vermont CO-OP had its loan terminated by HHS, and the CO-OP “said it will be unable to repay \$4.5 million that had been spent.”¹¹ Similarly, the Ohio CO-OP also missed the deadline for getting licensed and its CEO was uncertain about whether the CO-OP would be able to continue to operate.¹²

These recent reports have further underscored our valid concerns about the nature of the CO-OP program and have illustrated the need for effective management by HHS and CMS, as well as consistent Congressional oversight. Therefore, in the interest of taxpayers and individuals enrolled in these plans, please provide our offices with the following information:

1. What steps did HHS take to actively monitor the status of CO-OP awardees’ license applications?
2. Have all 24 CO-OPs received state insurance licenses? For any CO-OPs that have not yet been licensed by states in which they operate, when do you expect that they will receive a license?
3. Why did the Ohio CO-OP miss the deadline to receive its state insurance license?

⁵ *Id.* At 9.

⁶ HHS Office of the Inspector General, “The Centers for Medicare & Medicaid Services Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed,” A-05-12-00043 (July 2013).

⁷ *Id.* at ii.

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Health CO-OPs, Created to Foster Competition and Lower Insurance Costs, Are in Danger*, October 22, 2013, available at http://www.washingtonpost.com/politics/health-co-ops-created-to-foster-competition-and-lower-insurance-costs-are-facing-danger/2013/10/22/e1c961fe-3809-11e3-ae46-e4248e75c8ea_story.html.

¹¹ *Id.*

¹² *Id.*

4. When do you anticipate that the CO-OPs will become fully operational? What is HHS doing to ensure that CO-OP startup funds are not exhausted before they become fully operational?
5. What has HHS done in response to the Inspector General's finding that "11 of 16 CO-OPs reported estimated startup expenditures in their applications that exceeded the total startup funding ultimately provided by CMS"? Specifically, has HHS required these 11 CO-OPs to make any adjustments to their budgets and/or operation plans?
6. For the 11 CO-OPs identified in the previous question, please explain why CMS elected to fund these entities at a lower level than the estimated startup expenditures.
7. Following the problematic launch of the HealthCare.gov website, what steps has HHS taken to ensure that CO-OPs are able to sign up new customers using alternative means?
8. Have CO-OPs submitted all required quarterly and semiannual reports and quarterly disbursement requests? If not, what steps has HHS taken?
9. Under the terms of the CO-OP program, a CO-OP is required to inform CMS one month in advance if it believes that it will be unable to reach any of its milestones. Identify each CO-OP that has made this notification to CMS. In each instance, provide the CO-OP's explanation about why it made the notification and what steps, if any, CMS took in response to the notification.
10. Has HHS delayed or discontinued funding to any co-op as the result of the CO-OP's failure to meet the operating requirements?
11. The Inspector General's first July 2013 report indicates that CMS delayed portions of startup loans to five co-ops because they failed to reach milestones on time. What is the operating status of each of these CO-OPs?
12. What has HHS done to address the financial problems in the Maryland, New York, and New Jersey CO-OPs? Has HHS made any modifications to the loan terms of these CO-OPs?
13. Please provide all documents related to (1) the Vermont CO-OP's failure to obtain an insurance license and (2) HHS's decision to terminate the Vermont CO-OP's loan.
14. What steps has HHS taken to recover funds from the Vermont CO-OP?
15. Out of the \$1.98 billion awarded to CO-OPs, what amount does HHS expect to be repaid? What is the period of time by which HHS expects these funds to be repaid?

We appreciate your assistance in helping us better understand the current state of the CO-OP program. Due to the urgency of the reported problems associated with the CO-OPs, we ask that you respond to this letter in a more timely fashion than to our previous letter and provide responses no later than December 6, 2013.

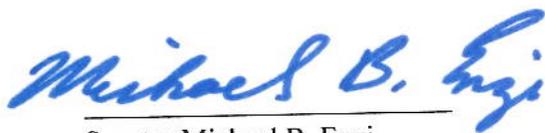
Sincerely,



Senator Orrin G. Hatch
Ranking Member
Finance Committee



Senator Lamar Alexander
Ranking Member
Health, Education, Labor, and
Pensions Committee



Senator Michael B. Enzi
Ranking Member
Health, Education, Labor, and
Pensions Subcommittee on Children
and Families



Senator Tom Coburn, M.D.
Ranking Member
Homeland Security and Government
Affairs Committee



Representative Charles W. Boustany, Jr., M.D.
Chairman
House Ways and Means Subcommittee on Oversight

cc: Administrator Marilyn Tavenner, Centers for Medicare & Medicaid Services