U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

November 2, 2015

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled "Examining the Costly Failures of Obamacare's CO-OP Insurance Loans"

On Thursday, November 5, 2015, at 10:00 a.m. in 2322 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing entitled "Examining the Costly Failures of Obamacare's CO-OP Insurance Loans."

Section 1322 of the Patient Protection and Affordable Care Act (ACA) established the Consumer Operated and Oriented Plan (CO-OP) program. Under the program, the Secretary of Health and Human Services (HHS) was authorized to provide loans to create new non-profit health insurance issuers, intended to increase choice and create competition among insurers. Although Congress initially allotted $6 billion for the program, subsequent legislation rescinded over half of the initial funding, leaving $2.4 billion for the program. The Centers for Medicare and Medicaid Service (CMS) funded 23 CO-OPs, not including Vermont's CO-OP, which dissolved before open enrollment began. Of the 23 CO-OPs that sold health insurance plans, 11 have closed to date; these 11 CO-OPs represent over $1 billion taxpayer dollars.

I. WITNESSES

Panel One:

- Ben Sasse, Senator, Nebraska.

Panel Two:

- Julie McPeak, Insurance Commissioner, Tennessee;
- James Donelon, Insurance Commissioner, Louisiana;
- Peter Beilenson, Board of Directors, National Alliance of State Health CO-Ops; and
- John Morrison, Vice Chair, Montana Health CO-OP

Panel Three:

- Mandy Cohen, Chief of Staff, Centers for Medicare and Medicaid Services; and

- Gloria L. Jarmon, Deputy Inspector General for Audit Services, Office of Inspector General, U.S. Department of Health and Human Services.

II. BACKGROUND

Section 1322 of the Affordable Care Act

The ACA established health insurance marketplaces in all 50 States and the District of Columbia to facilitate the purchase of health insurance by individuals and small businesses as required under the law.[1] Section 1322 of the ACA established the CO-OP program, envisioned as an opportunity to give consumers more choices in their healthcare plans and increase competition among insurers.[2] According to HHS, CO-OPs were designed to be "directed by their customers and designed to offer individuals and small businesses additional affordable, consumer-friendly, and high-quality health insurance options."[3]

CMS awarded $2.4 billion in government-backed loans to the 24 CO-OPs established under the law, through two types of loans.[4] Start-up loans are designed to pay for the CO-OPs' beginning operations and must be repaid within five years.[5] Solvency loans are intended to enable CO-OPs to meet capital reserve requirements of the States in which the applicants sought a license to sell insurance, and must be repaid within 15 years.[6] CO-OPs must pay any outstanding debts or obligations before repaying the loan funds to CMS.[7] On January 1, 2014, 23 CO-OPs offered health insurance coverage through the new health insurance marketplaces in 23 States.

Before the CO-OP program was implemented by HHS, both HHS and the Office of Management and Budget (OMB) projected significant loss of taxpayer dollars because of government loans made through this program. HHS's 2011 proposed rule to implement the CO-OP program estimated that approximately one-third of CO-OPs would fail to repay their loans, predicting that only "65 percent of the Solvency Loans and 60 percent of the Start-up Loans"

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[1] Patient Protection and Affordable Care Act of 2010, § 1311 (2010).
[2] Patient Protection and Affordable Care Act of 2010, § 1322 (2010).
[3] Dep't of Health & Human Serv., Centers for Medicare & Medicaid Serv., Center for Consumer Information & Insurance Oversight, *Fact Sheet: New Federal Loan Program Helps Nonprofits Create Customer-Driven Health Insurers, available at* http://cciio.cms.gov/resources/factsheets/coop_final_rule.html (last visited Oct. 29, 2015).
[4] Dep't of Health and Human Serv., Centers for Medicare & Medicaid Serv., Center for Consumer Information & Insurance Oversight, *Loan Program Helps Support Customer-Driven Non-Profit Health Insurers, available at* https://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html (last visited Oct. 29, 2015).
[5] 45 CFR § 156.520 (2012).
[6] *Id*.
[7] Office of Inspector Gen., Dep't of Health and Human Servs., Actual Enrollment and Profitability Was Lower Than Projections Made By The Consumer Operated and Oriented Plans and Might Affect Their Ability To Repay Loans Provided Under the Affordable Care Act, Audit no. A-05-14-00055 (July 2015).

would be repaid.[8] The following year, OMB projected taxpayers would lose over 40 percent of loans offered through the program.[9]

HHS OIG Audits

Given the concern about the long-term solvency of the CO-OPs, the HHS Office of the Inspector General (OIG) has conducted multiple audits of the CO-OPs participating in the program. In July 2013, an OIG audit identified factors that could adversely affect the CO-OP program, including limited private monetary support and budget startup expenditures that exceeded available funding.[10] The audit found that "11 of 16 CO-OPs reported estimated startup expenditures in their applications that exceeded the total startup funding provided by CMS."[11] The OIG audit warned that CO-OPs were at risk of exhausting all start-up funding before they were fully operational if certain circumstances occurred, such as low enrollment, uncertainty about operations of the marketplaces, and State's denial of licensure.[12]

An audit released by the OIG in July 2015 found that most of the 23 CO-OPs reviewed had not met their initial program enrollment and profitability projections.[13] In 13 of the 23 CO-OPs, member enrollment was considerably lower than the CO-OPs' initial annual projections, and 21 of the 23 CO-OPs incurred net losses from January 1, through December 31, 2014.[14] More than half of the 23 CO-OPs had net losses of at least $15 million for this period. The OIG explained that "low enrollments and net losses might limit the ability of some CO-OPs to repay startup and solvency loans."[15] The audit also provided insight into CMS's oversight mechanisms for the CO-OP program. According to the OIG, CMS had placed four CO-OPs on enhanced oversight or corrective action plans and two CO-OPs on low-enrollment warning notifications.[16] The OIG also noted that CMS may terminate the loan agreement if "the CO-OP fails to meet quality and performance standards, including implementation of milestones and enrollment targets as specified in the loan agreement or any other contractual obligation with CMS."[17]

[8] "Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO-OP) Program," 76 Federal Register 139 (20 July 20 2011), p. 43247.
[9] Office of Mgmt. & Budget, Exec. Office of the President, Budget of the U.S. Government, Fiscal Year 2013, Federal Credit Supplement, Table 1 (2012).
[10] Office of Inspector Gen., Dep't of Health and Human Servs., CMS Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed, Audit no. A-05-12-00043 (July 30, 2013).
[11] *Id*.
[12] *Id*.
[13] Office of Inspector Gen., Dep't of Health and Human Servs., Actual Enrollment and Profitability Was Lower Than Projections Made By The Consumer Operated and Oriented Plans and Might Affect Their Ability To Repay Loans Provided Under the Affordable Care Act, Audit no. A-05-14-00055 (July 2015).
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*.

III. CONSUMER OPERATED AND ORIENTED PLAN (CO-OP) PROGRAM

Of the 23 CO-OPs initially established by HHS pursuant to the ACA, 11 have closed.

CO-OP	Award Amount	Date of Closure
CoOpportunity Health (Iowa/Nebraska)	$145,312,100	January 23, 2015
Louisiana Health Cooperative, Inc.	$65,790,660	July 24, 2015
Nevada Health Cooperative, Inc.	$65,925,396	August 25, 2015
Health Republic Insurance of New York	$265,133,000	September 25, 2015
Kentucky Health Care Cooperative (Kentucky/West Virginia)	$146,494,772	October 9, 2015
Community Health Alliance Mutual Insurance Company (Tennessee)	$73,306,700	October 14, 2015
Colorado HealthOp	$72,335,129	October 16, 2015
Health Republic Insurance of Oregon	$60,648,505	October 16, 2015
Consumers’ Choice Health Insurance Company (South Carolina)	$87,578,208	October 22, 2015
Arches Mutual Insuance Company (Utah)	$89,650,303	October 27, 2015
Meritus Health Partners (Arizona)	$93,313,233	October 31, 2015

This total does not include Vermont’s CO-OP, which was dissolved before enrolling a single person.[18] Despite receiving an award approved for over $33 million, Vermont’s CO-OP failed to meet the State’s insurance standards and was denied a license to sell health insurance.[19] Vermont’s former Chief Executive has said it will be unable to repay $4.5 million that had been spent.[20]

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[18] Anne Galloway, *Feds Terminate Loan Agreement with Vermont Health CO-OP*, VT DIGGER, Sept. 16, 2013.
[19] State of Vt. Dep’t of Fin. Regulation, In the Matter of: Application by the Proposed Vermont Health CO-OP for a Certificate of Public Good and Certificate of Authority to Commence Business as a Domestic Mutual Insurance Company, Docket No. 12-041-I (May 22, 2013).
[20] Jerry Markon, *Health co-ops, created to foster competition and lower insurance costs, are facing danger*, THE WASHINGTON POST, Oct. 22, 2013.

CoOpportunity, a CO-OP operating in Iowa and Nebraska, was the next CO-OP to fail after Vermont, and was taken over by Iowa insurance regulators in December of 2014.[21] CoOportunity launched in March 2013 and enrolled over 120,000 individuals, amounting to one fifth of CO-OP enrollees nationally.[22] Of the $145 million Federal loans CoOportunity received, $33 million were awarded in September 2014, just months before the State of Iowa took possession of the CO-OP's assets.[23] In March 2014, CoOportunity was liquidated, and an Iowa district court found that its operating losses were over $163 million and it had $50 million more in liabilities than assets.[24]

As it became apparent that many CO-OPs faced significant financial hurdles in late 2014, HHS awarded more than $350 million in additional loans to six CO-OPs: $91 million to Health Republic Insurance of New York, $66 million to Minuteman Health, $65 million to Kentucky Health Co-op, $51 million to Common Ground Healthcare Co-op in Wisconsin, $48 million to HealthyCT, and $33 million to CoOportunity.[25] Three of those six CO-OPs have since closed, and it is unclear whether taxpayers will recoup any of those dollars.

The 11 failed CO-OPs canceled health insurance for customers in 14 States: Vermont, Kentucky, Tennessee, Iowa, Nebraska, West Virginia, Colorado, New York, Louisiana, Nevada, Oregon, Utah, South Carolina, and Arizona. Seven of the 11 CO-OPs have closed their doors in just the last month, in anticipation of open enrollment which began on November 1, 2015.

IV. ISSUES

The following issues may be examined at the hearing:

- What factors contributed to the collapse of 11 CO-OPs to date?
- What are CMS' oversight mechanisms to monitor CO-OPs, and are they effective?
- What is the likelihood that the Federal government will recoup any of the loans awarded to failed CO-OPs?
- What steps can CMS, CO-OPs and State regulators take to help CO-OPs repay the loans and minimize loss to taxpayers?
- How does the closure of CO-OPs affect consumers?

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[21] Steve Jordan, *Troubled Iowa Insurer CoOportunity Health May be Liquidated*, OMAHA WORLD HERALD, Dec. 24. 2014.
[22] *Id*.
[23] Department of Health and Human Services, Centers for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, "Loan Program Helps Support Customer-Driven Non-Profit Health Insurers", December 16, 2014, https://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html
[24] *State of Iowa, ex. rel. Nick Gerhart, Commissioner of Insurance v. CoOportunity Health, Inc*. Case Number EQCE077579, Final Order of Liquidation, March 2, 2015.
[25] Dep't of Health and Human Services, Centers for Medicare & Medicaid Serv., Center for Consumer Information and Insurance Oversight, "Loan Program Helps Support Customer-Driven Non-Profit Health Insurers", December 16, 2014, https://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Emily Felder, Jessica Donlon, or Brittany Havens of the Committee staff at (202) 225-2927.