LOUISIANA DEPARTMENT OF INSURANCE
JAMES J. DONELON
COMMISSIONER

December 23, 2015

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Congressman Murphy:

Please find attached hereto my answers to additional questions submitted in the Congressional Record following the hearing of your Subcommittee on November 5, 2015 regarding the Co-Op Loan Program created by the Affordable Care Act. First, let me begin by explaining my request to you at the time of my appearance for permission to leave the meeting following the second round of testimony by myself and my fellow witnesses. As I explained at that time, my flight departure was fast approaching and I was anxious to return to Louisiana for business purposes but questioned the decision to ask permission to depart prior to adjournment when upon my return home that evening was questioned by my wife about the appropriateness of my request. She had seen the meeting on C-Span earlier that evening.

In hindsight I acknowledge that it was not appropriate for me to do so and I regret the precedent I set with that request and apologize for any breach of congressional protocol it represented. Be assured that I am happy to answer any follow up questions any member has concerning the failure of the Louisiana Health Co-Op and am pleased to be able to help in that regard with the attached responses. Additionally, I will happily respond to any follow up questions you or the other members have concerning the circumstances leading to the failure of our Co-Op and would also be happy to make my staff available to yours for any follow up information needed by your committee. Again, I regret the early departure and hope that it did not result in a burden to the committee or its staff as you pursue the important issues presented by the failure of Co-Ops across the country.

With best wishes and kindest personal regards, I remain

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Attachment - Additional Questions for the Record

The Honorable Tim Murphy

1. Mr. Donelon, you were instrumental in regulating the CO-OPs so that premium prices were appropriate and consumers were protected.

    a. What problems did your state's CO-OP encounter that led to its closure?
    b. Does your state's CO-OP have enough money to support consumers and pay its claims through the end of the year?
    c. If no, then how will claims be paid?
    d. What was the CO-OP's projected enrollment? Did they reach it?

2. CMS converted solvency loans to start-up loans in seven CO-OPs, so the loans would artificially appear more financially secure.

    a. Did CMS approach you about converting solvency loans as start-up loans so the CO-OP would appear to have more capital on the books?
    b. If yes, do you believe it makes sense to convert the loans? Why?
    c. What problem would converting the loans solve?

3. CMS has created "enhanced oversight plans" as a measure to evaluate troubled CO-OPs.

    a. Did CMS place your CO-OP under an enhanced oversight plan?
    b. If yes, explain what the "oversight plan" entailed.

4. Mr. Donelon has said that over $9 million in solvency loans has been reserved to pay outstanding claims to providers that served customers in the CO-OPs. CMS required the CO-OP to change leadership before authorizing the spending of the $9.25 million.

    a. Did the Louisiana CO-OP receive its federal loans in one lump sum or were they allotted in increments?
    b. Did CMS have a say in how each increment was spent?
    c. Did CMS reserve federal funds to be spent only on claims to providers?
    d. How much money? What were the conditions?

5. In your testimony, you write that the Louisiana CO-OP made decisions that could hurt consumers.

    a. Is it true that the Louisiana CO-OP missed the 90 day notice requirement, and gave its enrollees only a week to pick a new health insurance plan?
    b. Can you explain how that hurts consumers?
    c. Is that an example of poor leadership within the CO-OP?
    d. The Louisiana Health CO-OP is not backed by a guaranty fund, so if the CO-OP cannot pay its claims, enrollees and mostly providers will be stuck with unpaid bills. How will this affect consumers and providers? Who is to blame – the CO-OP or CMS?

Additional Questions for the Record

The Honorable Tim Murphy

1. **Mr. Donelon, you were instrumental in regulating the CO-OPs so that premium prices were appropriate and consumers were protected.**
    a. **What problems did your state's CO-OP encounter that led to its closure?**
    The Co-Op had numerous operational and organizational problems from its inception. We are still in the process of determining the full extent of the Co-Op's operational problems. Once the Co-Op was placed into receivership, it was clear that the Co-Op was unprepared for the nature of the individual health insurance market, which has caused a multitude of problems including: failing to give enrollees timely notice of premium statements, in some cases the failure entirely to bill enrollees for premiums due, the failure to adequately and timely provide prior authorizations for requested services, the failure to adequately and timely process, adjudicate and pay claims which resulted in the Co-Op paying statutorily-required interest to providers, and failure to provide notices of termination under Louisiana law. Furthermore, although the rates for the Co-Op's products appeared to be reasonable upon review by actuaries, the underlying assumptions regarding enrollment failed to materialize. As a result, the Co-Op's loss ratio was unsustainable, which also partly resulted from poor medical management and utilization.
    b. **Does your state's CO-OP have enough money to support consumers and pay its claims through the end of the year?**
    Yes, the La Co-Op will have enough funds to pay claims through the end of the year for those claims we expect to receive before year-end. We are in the process of recalculating claims in accordance with a recent order of the court which provides a reduced obligation. The calculated results are as yet unknown, but we are hopeful the adjustments, when coupled with asset recoveries, will allow us to pay all provider claims. Co-Op enrollees will be covered for services with their providers through December 31.
    c. **If no, then how will claims be paid?**
    d. **What was the CO-OP's projected enrollment? Did the reach it?**
    Enrollment was project by Co-Op management at 28,000 for 2014, 38,000 for 2015 and 44,000 for 2016. The Co-Op never reached their projections in 2014 or 2015. Enrollment reached a high of 16,262 in April 2015 and is currently 10,366.

2. **CMS converted solvency loans to start-up loans in seven CO-OPs, so the loans would artificially appear more financially secure.**
    a. **Did CMS approach you about converting solvency loans to start-up loans so the CO-OP would appear to have more capital on the books?**
    The conversion referenced in this question was not an appropriate option for the Louisiana Co-Op because at the time that conversions were occurring, it was already clear that the Louisiana Co-Op would not survive.

b. **If yes, do you believe it makes sense to convert the loans? Why?**
c. **What problem would converting the loans solve?**
Since the La. Co-Op's loans were not converted, I cannot predict what may have resulted from the conversion, if anything.

3. **CMS has created "enhance oversight plans" as a measure to evaluate troubled CO-OPs.**
   a. **Did CMS place your CO-OP under an enhanced oversight plan?**
   Yes, we are aware that CMS had placed the Co-Op under stringent reporting time frames for voluminous types of information and that various milestones were included in this corrective action plan.
   b. **If yes, explain what the oversight plan entailed.**
   The Louisiana Department of Insurance did not influence or consult on the CMS-initiated plan. I would urge you to inquire with CMS for any specific corrective action plans for the Co-Ops collectively or individually. I am willing and more than happy to coordinate the transmittal of copies of the oversight plan from the Co-Op's receiver to you. However, those documents are not within the possession of the Department of Insurance.

4. **Mr. Donleon has said that over $9 million in solvency loans has been reserved to pay outstanding claims to providers that served customers in the CO-OPs. CMS required the CO-OP to change leadership before authorizing the spending of the $9.25 million.**
   a. **Did the Louisiana CO-OP receive its federal loans in one lump sum or were they allotted in increments?**
   Yes, the Co-Op received its final solvency loan of $9,263,798 on November 27, 2015. Below is a chart of both solvency loans and start-up loans received by the Co-Op.

Start-up Loans ~ $13,176,560

$ 4,344,050.00	10/12/2012
$ 1,937,800.00	12/28/2012
$ 1,408,270.00	3/22/2013
$ 1,738,340.00	6/21/2013
$ 2,375,986.00	9/20/2013
$ 612,114.00	12/20/2013
$ 10,000.00	1/4/2014
$ 740,000.00	1/4/2014
$ 5,000.00	3/20/2014
$ 5,000.00	6/20/2014

Solvency Loans ~ $52,614,100

$	10,690,120.00	3/28/2013
$	4,726,440.00	6/14/2013
$	750,000.00	12/27/2013
$	27,183,742.00	3/27/2014
$	9,263,798.00	11/27/2015

b. Did CMS have any say in how each increment was spent?
The loan agreements have restrictions on how funds are spent:

<u>Solvency Loan Restrictions</u>

Section 5. SOLVENCY FINANCING-BASE PROVISIONS

5. 1. Use

Solvency Loan Funds must only be used to establish Risk-Based Capital Reserves to be held by Borrower and other capital reserves necessary to meet State Reserve Requirements and other State Insurance Laws, and then only in strict accordance with the Business Plan and Disbursement Plan. Borrower must notify Lender in writing if Borrower determines that its expenses have exceeded its premium revenue for three consecutive months, which notice shall be delivered within 30 calendar days of such determination.

<u>Start-up Loan Restrictions</u>

Section 4. START -UP LOAN -BASE PROVISIONS

4.1. Use

Start-Up Loan Funds must only be used in accordance with the Business Plan, the Start-Up Loan Disbursement Plan and the CO-OP FOA. Start-Up Loan Funds cannot be used to pay for costs associated with purchase of land and construction of facilities, including construction or clinical costs such as the costs of actual medical services provider salaries and contracts or payment, provider clinical space, and clinical equipment.

c. Did CMS reserve federal funds to be spent only on claims to providers?
No additional restrictions are known other than those in the loan documents referred to above.

d. How much money? What were the conditions?
See subpart c above.

5. **In your testimony, you write that the Louisiana CO-OP made decisions that could hurt consumers.**
   a. Is it true that the Louisiana CO-OP missed the 90 day notice requirement, and gave its enrollees only a week to pick a new health insurance plan?

Yes, this is true. It occurred when the Co-Op failed to meet the requirement for coverage that was to be renewed on January 1, 2015.

b. Can you explain how that hurts consumers?

In order for a consumer to have coverage with an effective date of January 1, a consumer must enroll in a health plan and pay the first month's premium by December 15. When consumers receive notice from the Co-Op on December 7 that their plans will be discontinued on January 1, and that they must therefore pick a new plan for coverage on January 1, a consumer thereby has only between December 7 and December 15 to pick an entirely new health plan. Both state and federal law included a 90 day notice for plan discontinuation precisely to avoid these situations so that consumers can have a reasonable amount of time to comb through the details of health plans without being rushed into a decision.

c. Is that an example of poor leadership within the CO-OP?

It was an obvious mistake that I believe was the result of the many challenges faced by start-up insurers working within short time frames. Certainly, the leadership made the mistake but it also was obviously not intentional.

d. The Louisiana Health CO-OP is not backed by a guaranty fund, so if the CO-OP cannot pay its claims, enrollees and mostly providers will be stuck with unpaid bills. How will this affect consumers and providers? Who is to blame—the CO-OP or CMS?

It will affect consumers and providers precisely as stated in the question—some bills, which are the legal obligation of the Co-Op, may go unpaid or paid at a reduced amount. With respect to apportioning blame, it is the fault of an insurer of any kind when it fails to satisfy its legal obligations. CMS has no say in nor any role in the liquidation of insurance companies as it is entirely the purview of states. Some states require guaranty fund contributions and therefore coverage by HMOs and some states do not. Louisiana does not, partly at the urging of existing insurers in the state who do not want to subsidize poorly capitalized, start-up competitors, which is true in many other states.