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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

October 2, 2012

Ms. Sara Horowitz
Executive Director
Freelancers Union
20 Jay Street, Suite 700
Brooklyn, NY 11201

Dear Ms. Horowitz:

The Committee on Oversight and Government Reform is conducting oversight of loans given by the Department of Health and Human Services (HHS) through the new Consumer Operated and Oriented Plan (CO-OP) program. This program, which is authorized by Section 1322 of the Patient Protection and Affordable Care Act (PPACA), provides funding to establish non-profit health insurance issuers throughout the United States by 2014.¹ We are concerned that taxpayers will lose a significant amount of money through the CO-OP program. According to the Obama Administration's own projections, taxpayers will lose over 40 percent of the amount of loans given out through the CO-OP program, with total losses projected to exceed \$3.1 billion.² We are also concerned because the process used to reward CO-OP loans appears to be flawed.

There are two types of loans given through the CO-OP program: start-up loans and solvency loans. Start-up loans offer funding to assist with start-up activities associated with developing a CO-OP; solvency loans enable states to meet insurance solvency and reserve requirements.³ As illustrated in the table on the following page, the Office of Management and Budget estimates that taxpayers will lose \$326 million on start-up loans and \$2.8 billion on solvency loans.⁴

Table 1: CO-OP Program Loans and Projected Taxpayer Losses (in millions)

| | Amount of Loans | Projected Taxpayer Losses | Percentage Loss |
|----------------|--------------------|------------------------------|--------------------|
| Startup Loans | \$870 | \$326.6 | 37.5% |
| Solvency Loans | \$6,380 | \$2,803.6 | 44.0% |
| Aggregate | \$7,250 | \$3,130.2 | 43.2% |

Source: OMB, Federal Credit Supplement FY 2013, Table 1

¹ Patient Protection and Affordable Care Act, PUB. LAW 111-148; HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUB. LAW 111-152 §1322.

² *Budget of the U.S. Government, Fiscal Year 2013, Federal Credit Supplement*, Table 1.

³ *Id.*

⁴ *Id.*

The CO-OP loan program is part of the federal government's Direct Loan Program (DLP).⁵ While loans made through the DLP are inherently risky, the expected taxpayer loss through the CO-OP program is extraordinarily high. By way of comparison, the mean expected taxpayer loss in Fiscal Year (FY) 2012 for other non-educational loans through the DLP is 8.3 percent.⁶ The expected loss of taxpayer funds (43.2 percent) for the CO-OP program is thus five times the expected loss of the rest of the non-educational DLP portfolio.⁷ The CO-OP program also has the highest expected loss percentage of all non-educational direct loans made in excess of \$10 million in FY 2012.⁸

Avik Roy, a Senior Fellow at the Manhattan Institute, explains how the CO-OP program design makes the CO-OPs likely to fail:

[T]he plans are prohibited from using the loans for marketing purposes. So there isn't an easy way for the plans to make consumers aware of them. The plans are prohibited from working with insurers already in operation, hence limiting their ability to gain from the experience of existing market players. The plans will have to enroll members and contract with providers—but unless they are able to enroll a good mix of healthy and sick people, they'll pay out more in claims than they take in premiums: the classic problem of adverse selection. Since healthy people have plenty of options already, it's sick people who will be most likely to sign up for the CO-OP plans.⁹

The CO-OP program has received bipartisan criticism. For example, Senator John D. Rockefeller (D-WV) criticized the CO-OP design in a letter to the Chairman and Ranking Member of the Senate Finance Committee, writing "I believe it is irresponsible to invest over \$6 billion in a concept that has not proven to provide quality, affordable health care."¹⁰

The expected major loss of taxpayer money through the CO-OP program is similar to the Obama Administration's failed Department of Energy (DOE) 1705 Loan Guarantee Program.¹¹ The recent bankruptcies of Solyndra, Beacon Power, and Abound Solar, which collectively received nearly one billion dollars in loan guarantees through the 1705 program, highlight the problems when the government picks winners and losers.¹² According to Dr. Roger Stark, a

⁵ U.S. Dept. of Health and Human Services, Center for Consumer Information & Insurance Oversight, *New Federal Loan Program Helps Nonprofits Create Customer-Driven Health Insurers*, June 6, 2012, http://cciio.cms.gov/resources/factsheets/coop_final_rule.html.

⁶ See note 2, *supra*.

⁷ *Id.*

⁸ *Id.*

⁹ Avik Roy, *Six Solyndras: Obamacare blows \$3 Billion on Faulty CO-OP Insurance Loans*, *Forbes*, May 30, 2012.

¹⁰ Letter from John D. Rockefeller, Chairman, S. Comm. on Commerce, Science, and Transportation, to S. Comm. on Finance Chairman Max Baucus and S. Comm. on Finance Ranking Member Charles Grassley, Sept. 16, 2009.

¹¹ H. Comm. on Oversight & Gov't Reform Staff Report, *The Department of Energy's Disastrous Management of Loan Guarantee Programs*, 112th Cong. (March 20, 2012), <http://oversight.house.gov/wp-content/uploads/2012/03/FINAL-DOE-Loan-Guarantees-Report.pdf>.

¹² *Id.*; Matthew L. Wald, *A 2nd U.S.-Supported Maker of Solar Panels Will Close*, *New York Times*, June 28, 2012, http://www.nytimes.com/2012/06/29/business/energy-environment/abound-solar-says-it-will-file-for-bankruptcy.html?_r=0

physician and health care policy analyst at the non-partisan Washington Policy Center, the administration's CO-OP program is "playing political favorites in handing out the loans, and may be totally illegal in doing so."¹³

Eighteen organizations have received loans through the CO-OP program to date.¹⁴ Your company, Freelancers Union, received \$340 million in CO-OP loans on February 21, 2012, to fund three different CO-OPs located in New York, New Jersey, and Oregon.¹⁵ However, Freelancers Union does not meet the eligibility criteria under the rules established by PPACA and there is also evidence that you may not be equipped to run a successful CO-OP.

First, according to Section 1322(c)(2)(a) of PPACA, organizations may not receive direct loans through the CO-OP program if the organization *or a related entity* was a health insurance issuer prior to July 16, 2009.¹⁶ According to your website, Freelancers Union created Freelancers Insurance Company in 2008.¹⁷ Freelancers Insurance Company's website indicates that it has been operating as an insurance company since January 1, 2009.¹⁸ In fact, in January 2011, Ms. Althea Erickson, Freelancers Union's advocacy and policy director, informed the CO-OP Advisory Committee, which is tasked to review CO-OP applications and make final recommendations to HHS, that "two years ago ... [your company had] started a state-licensed health insurance company."¹⁹ Furthermore, according to the same section of PPACA, only non-profit organizations may receive loans through the CO-OP program. In its report on the program, the CO-OP Advisory Board also emphasizes the importance that the CO-OP's sponsoring company be a non-profit entity as well.²⁰ However, according to Freelancers Insurance Company's website, it is "a for-profit insurance company owned wholly by Freelancers Union."²¹ At that same January 2011 Advisory Board meeting, Ms. Erickson reaffirmed that Freelancers Insurance Company "is a for-profit health insurer that is wholly owned by the nonprofit Freelancers Union."²²

Second, there is reason to believe that you lack the proper qualifications needed to serve as the CEO of a successful CO-OP. In statements before the CO-OP Advisory Board, several individuals emphasized the importance of previous experience in the health care industry. For instance, Mr. John Bertko, a Senior Fellow at the LMI Center for Health Reform, stated "[f]irst

¹³ Kenneth Artz, *Obama Administration May Have Used CO-OP Grants to Reward Political Allies*, Heartland Institute, June 29, 2012.

¹⁴ U.S. Dept. of Health & Human Services, *New Loan Program Helps Create Customer-Driven Non-Profit Health Insurers*, last updated Aug. 31, 2012, <http://www.healthcare.gov/news/factsheets/2012/02/coops02212012a.html>.

¹⁵ *Id.*

¹⁶ See note 1, *supra*: Patient Protection and Affordable Care Act, § 1322(c)(2)(a).

¹⁷ See *Freelancers Union: History*, available at <http://www.freelancersunion.org/about/history.html>.

¹⁸ Freelancers Insurance Company, *Freelancers Insurance Company to Begin Operating January 1, 2009*, Nov. 24, 2008, <https://www.freelancersinsuranceco.com/fic/news/2008/11/>.

¹⁹ U.S. Dept. of Health and Human Services, *CO-OP Program Advisory Board Transcript*, Jan. 13, 2011, See Remarks of Ms. Althea Erickson, p. 286- 287, http://cciio.cms.gov/resources/files/coop_faca_transcript_01132011.pdf

²⁰ The Center for Consumer Information and Insurance Oversight, *Report of the Federal Advisory Board on the CO-OP Program*, April 15, 2011, p. 9, http://cciio.cms.gov/resources/files/coop_faca_finalreport_04152011.pdf.

²¹ According to Freelancers Insurance Company's website, "[t]he nonprofit Freelancers Union started and wholly owns [Freelancers Insurance Company], and all [Freelancers Insurance Company] profits funnel back to Freelancers Union..." *About Us*, <https://www.freelancersinsuranceco.com/fic/about-us/index.html>.

²² See note 20, *supra* at 287.

and foremost, I'd say is the need to use professional health insurance managers to run the CO-OP."²³ Unlike many of the CEOs of CO-OPs who have received these loans, however, you do not have experience in medical care or in the health care industry. Instead, your biography on Freelancers Union's website lists your prior background as "a private practice labor attorney and union organizer."²⁴

You do, however, have powerful political connections. For instance, you served, alongside President Obama, as an advisor for the think tank Demos when he was an Illinois state senator.²⁵ President Obama's "green jobs czar" Van Jones also served as an advisor for Demos at the time.²⁶ The combination of Freelancers Union's failure to meet CO-OP program guidelines, your lack of qualifications to run a CO-OP and your connections to the Obama Administration raises questions about why and how Freelancers Union received a loan through the CO-OP program.

To assist the Committee in its oversight of the CO-OP program, please provide the following information to the Committee by Tuesday, October 16, 2012:

1. A copy of Freelancers Union's application for a CO-OP loan;
2. A copy of Freelancers Union's 2010 and 2011 *Return of Organization Exempt from Income Tax Form* (IRS Form 990);
3. A list of all grants, contracts, and loans ever received from the federal government by Freelancers Union or any of its related entities;
4. An itemized financial breakdown of how Freelancers Union CO-OP of New York has spent and plans to spend money received through the CO-OP program from February 21, 2012, to the present;
5. An itemized financial breakdown of how Freelancers Union CO-OP of New Jersey has spent and plans to spend money received through the CO-OP program from February 21, 2012, to the present;
6. An itemized financial breakdown of how Freelancers Union CO-OP of Oregon has spent and plans to spend money received through the CO-OP program from February 21, 2012, to the present;
7. All documents and communications between any employees, agents, or contractors of Freelancers Union and employees, agents, or contractors of the White House, Executive Office of the President, or any other federal agency or department referring or relating to

²³ See note 19, *supra*: Remarks of Mr. John Bertko, p. 26.

²⁴ Freelancers Union, *Board members*, <http://www.freelancersunion.org/about/board-of-directors.html#Sara-Horowitz>.

²⁵ CJ Ciaramella, *Freelance Cronyism: Small union receives \$341 million federal loan despite legal questions*, Free Beacon, March 1, 2012, <http://freebeacon.com/freelance-cronyism/>.

²⁶ *Id.*

Freelancers' CO-OP loan or Freelancers' loan application, between March 23, 2010, and the present;

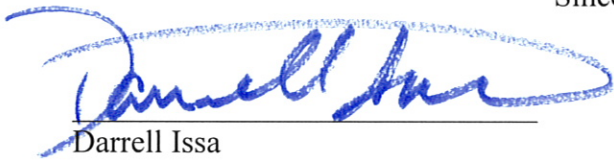
8. All documents and communications between any employees, agents, or contractors of Freelancers Insurance Company and employees, agents, or contractors of the White House, Executive Office of the President, or any other federal agency or department referring or relating to Freelancers' CO-OP loan or Freelancers' loan application, between March 23, 2010, and the present.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

If you have any questions about this request, please contact Brian Blase or Katelyn Christ of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Trey Gowdy
Chairman
Subcommittee on Health Care, District of
Columbia, Census, and the National Archives

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member

The Honorable Danny Davis, Ranking Minority Member, Subcommittee on Health care,
District of Columbia, Census and the National Archives