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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 23, 2012

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

Dear Madam Secretary:

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 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 and invites waste and mismanagement of federal tax dollars.

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 below, 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]

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[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.*

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

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 average 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

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[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.

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 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]

To assist the Committee in its oversight of the CO-OP program, please provide the following information to the Committee by 5:00 p.m., November 6, 2012:

1. All reports, evaluations, analyses, or estimates prepared by any HHS employee, agent, or contractor between March 23, 2010, and the present that assess the financial viability of any CO-OP applicant or the ability of any CO-OP applicant to repay a CO-OP loan.

2. All documents and communications to or from employees of HHS between March 23, 2010, and the present referring or relating to the financial viability of any CO-OP applicant or the ability of any CO-OP applicant to repay a CO-OP loan.

3. All documents and communications between employees of HHS and employees of the Executive Office of the President, including but not limited to the White House and the Office of Management and Budget, referring or relating to the CO-OP loan program.

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[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.

[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.

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 E. Cummings, Ranking Minority Member

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

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Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered 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.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.