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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

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March 25, 2013

Mr. Kenneth Lewis
Chief Executive Officer
Maine Community Health Options
P.O. Box 1121
Lewiston, ME 04243

Dear Mr. Lewis:

The Department of Health and Human Services has awarded nearly two billion taxpayer dollars to 24 nonprofit health insurers under the Consumer Operated and Oriented Plan (CO-OP) program.[1] Maine Community Health Options (MCHO) received approximately $62 million of this total on March 23, 2012.[2] We are writing to respectfully request your assistance with the Committee's oversight of the CO-OP program.

According to the Obama Administration's own projections, taxpayers could lose over 40 percent of the amount of loans given out to CO-OP program recipients.[3] Recent press reports also indicate a lack of transparency surrounding the CO-OP program.[4] According to a recent *Washington Examiner* article, for instance, HHS officials "have not made public their criteria for evaluating loan applicants" and several CO-OPs who were denied loans are confounded as to why they did not receive funding.[5] Based on findings from the Committee's inquiries into two recipient companies so far, we are also concerned because the process used to award CO-OP loans appears to be flawed.[6]

The high projected loss rate of the CO-OP program as well as the lack of transparency surrounding the awarding of these loans raises serious questions about the program. To assist the Committee in its oversight of the CO-OP program, we request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on April 8, 2013:

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[1] Patient Protection and Affordable Care Act, PUB. LAW 111-148; HEALTH CARE AND EDUCATION RECONCILITATION ACT OF 2010, PUB. LAW 111-152 §1322; The CO-OP program to date has offered low-interest loans to 24 non-profits offering coverage in 24 states $1,980,728,696; *See* Center for Medicare & Medicaid Services, *New Loan Program Helps Create Customer-Driven Non-Profit Health Insurers*, (Feb. 8, 2013).

[2] *Id.*

[3] *Budget of the U.S. Government, Fiscal Year 2013, Federal Credit Supplemental* , Table 1.

[4] Richard Pollock, "Obamacare co-ops being created behind closed doors," *Washington Examiner*, (Feb. 5, 2013).

[5] *Id.*

[6] *See* Letters from Reps. Darrell Issa & Trey Gowdy, H. Cmte. on Oversight & Gov't Reform, to Mr. Thomas Zumtobel, CEO, Hospitality Health; Ms. Sara Horowitz, Executive Director, Freelancers Union, (Oct. 2, 2012).

1. A copy of MCHO's application for a CO-OP loan.

2. A copy of the 2010 and 2011 *Return of Organization Exempt from Income Tax Forms* (Form 990) for MCHO and all of its sponsors[7] and related entities.[8]

3. A list of all grants, contracts, and loans ever received from the federal government by MCHO or any of its sponsors and related entities.

4. An itemized financial breakdown of how MCHO has spent and plans to spend money received through the CO-OP program from September 28, 2012, to the present.

5. All documents and communications between or among any employees, agents, or contractors of MCHO or any of its sponsors or affiliated entities and any employees, agents, or contractors of the Executive Office of the President, the Department of Health and Human Services, or any other federal agency or department referring or relating to MCHO's CO-OP loan or loan application, between March 23, 2010, and the present.

6. All documents and communications between or among employees, agents, or contractors of MCHO and employees, agents, or contractors of its sponsors or affiliated entities referring or relating to MCHO's CO-OP loan or 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, if possible, to receive all documents in electronic format.

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[7] "Sponsor" means "an organization or individual that is involved in the development, creation or organization of the CO-OP or provides financial support to a CO-OP." *See* Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO-OP) Final Rule Fed. Reg. 77393 Vol. 76 No. 239, Dec. 13, 2011.

[8] "Related entity" means "an organization that shares common ownership or control with a pre-existing issuer … and satisfies at least one of the following conditions: (1) Retains responsibilities for the services to be provided by the issuer; (2) furnishes services to the issuer's enrollees under an oral or written agreement; or (3) performs some of the issuer's management functions under contract or delegation." *Id.*

If you have any questions about this request, please contact Katelyn Christ or David Brewer of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman
Committee on Oversight and Government Reform

James Lankford
Chairman
Subcommittee on Energy Policy, Health Care and Entitlements

Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care Policy and Entitlements

The Honorable Matt Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs

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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.