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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 4, 2013

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

Dear Madam Secretary:

The Committee's continues its oversight of the Consumer Operated and Oriented Plan (CO-OP) program.¹ In a February 12, 2013, letter to the Committee, Centers for Medicare and Medicaid Services Administrator Marilyn Tavenner said the CO-OP loan approval process was "rigorous, objective and independent," and stated that "CMS has worked with individual loan recipients and state regulators to structure solvency loans in a manner that satisfies state law and state solvency regulators."² Contrary to these assertions, one state regulator recently denied a CO-OP loan recipient a license to sell health insurance, ruling that the CO-OP failed to satisfy several aspects of state law and faced "an extremely high risk of insolvency."³ We are writing to reiterate the Committee's earlier requests for documents and information about the CO-OP program.

On May 22, 2013, the State of Vermont Department of Financial Regulation (DFR) ruled that the Vermont Health CO-OP failed to meet Vermont's insurance standards and denied Vermont Health CO-OP a license to sell health insurance in Vermont.⁴ CMS previously awarded the Vermont Health CO-OP a start-up loan in the amount of \$6,289,400 and a solvency loan in the amount of \$27,548,400 of taxpayer

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 Letter from Marilyn Tavenner, Acting Administrator, Centers for Medicare and Medicaid Services, to Rep. Darrell Issa, Chairman, H. Cmte. on Oversight & Gov't Reform, (Feb 12, 2013).

³ State of Vermont Department of Financial 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, <http://www.dfr.vermont.gov/sites/default/files/CO-OP-Order-Full%20Text.pdf>.

⁴ *Id.*

money.⁵ The DFR found numerous problems in Vermont Health CO-OP's application, including:

- Estimated insurance rates that would be unaffordable for consumers;
- Financial projections that show cumulative losses during the first three years of operations;
- Reliance on unrealistically high enrollment assumptions;
- Excessive compensation for the CO-OP's founder and board president;
- An illegal no-bid contract [which had been "reviewed and scrutinized by CMS"] with a firm led by the CO-OP's founder and board president that had the potential to pay the firm more than \$500,000 through 2013, before the CO-OP even began selling insurance;
- Among key officers of the CO-OP, a "lack [of] insurance experience and business qualifications commensurate with similar positions in similar entities";
- A plan to sell health insurance in Vermont after the state intends to implement Green Mountain Care in 2017, a state-based universal healthcare scheme that would effectively put the CO-OP out of business; and
- A plan that was presented to CMS to provide commissions for brokers in the small group market, which is illegal in Vermont.⁶

Despite all of these problems, CMS awarded the Vermont Health CO-OP approximately \$34 million of taxpayer money.⁷ It is unclear how much of this money has already spent and whether any of it can be clawed back from the CO-OP.

In her February 12, 2013, letter to the Committee, Ms. Tavenner also emphasized that Deloitte Consulting LLP conducted "extensive" reviews of all CO-OP loan applications.⁸ On April 26, 2013, Committee staff conducted an *in-camera* review of these reports. Since this material is relevant to the Committee's ongoing oversight of the CO-OP loan program, we write to request that HHS produce unredacted copies of all of these reports to the Committee.

During the April 26, 2013, *in-camera* review, Committee staff viewed application summaries for all 113 companies that applied for the CO-OP program, including those of the 24 CO-OPs that ultimately received funding. The outside consultant scored applicants on a scale of zero to 100 against six criteria outlined in the CO-OP program's

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ See note 2, *supra*.

Funding Opportunity Announcement (FOA),⁹ and, according to HHS officials, successful applicants that passed Deloitte's application reviews were sent to CMS for further consideration.¹⁰ Although scores varied widely, Committee staff determined that CO-OPs that passed these reviews received a score of at least 70. Information uncovered by Committee staff during the *in-camera* review of the Deloitte reports raises serious questions and concerns about CMS's selection process for the CO-OP loan program.

First, these reports pointed out weaknesses in the financial solvency of several companies. For example, the consultant stated that "supported financial statements" from Evergreen Health Cooperative, Inc., which initially failed the review but ultimately received about \$66 million from CMS,¹¹ "indicate a tenuous ability to remain financially solvent."¹² These reviews also raise concerns about the three CO-OPs sponsored by Freelancers Union, which received \$340 million in CO-OP funding.¹³ The consultant concluded that the current debt ratio of Freelancers Health Service Corporation of New York "is too high compared to the industry benchmark . . . which may indicate that the applicant is holding too much cash in reserves or that they are over-stating assets."¹⁴ They also found that Freelancers CO-OP of Oregon, "does not have specific knowledge of . . . insurance markets."¹⁵ Perhaps most surprisingly, the consultant predicted that the expenses of Freelancers CO-OP of New Jersey, will "grow slightly faster than revenues . . . which is a negative indicator of the CO-OP's ability to remain financially solvent in the long-term."¹⁶

Second, these reports note that the employees of several organizations receiving CO-OP funding had been involved in fraudulent and criminal activity. For instance, the consultant's review of Hospital Health CO-OP of Nevada noted that personnel associated with the CO-OPs sponsors, Culinary Health Fund and its national parent Unite Here Health, "demonstrate a record of involvement in multiple federal civil cases, state level cases, and liens and judgments."¹⁷ Hospitality Health received \$66 million in CO-OP loans from CMS.¹⁸ They also raised concerns that Terry Shilling, CEO of the Louisiana Health Cooperative, which received about \$65 million in funding,¹⁹ was involved in an

⁹ See Center for Medicare and Medicaid Services, Center for Consumer Information and Insurance Oversight, *Consumer Operated and Oriented Plan [CO-OP] Program Amended Announcement Invitation to Apply*, Loan Funding Opportunity Number: 00-COO-11-001, CFDA: 93.545, (Dec. 9, 2011).

¹⁰ HHS officials explained this to Committee staff at the April 26, 2013, *in-camera* review.

¹¹ See Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services, *New Loan Program Helps Create Customer-Driven Non-Profit Health Insurers*, (last updated Feb. 8, 2013), <http://cciiio.cms.gov/archive/grants/new-loan-program.html>.

¹² See Deloitte Consulting LLP's initial Evergreen Health Cooperative Inc. application review.

¹³ See note 5, *supra*.

¹⁴ See Deloitte Consulting LLP's Freelancers Health Service Corporation's application review.

¹⁵ See Deloitte Consulting LLP's Freelancers CO-OP of Oregon's application review.

¹⁶ See Deloitte Consulting LLP's Freelancers CO-OP of New Jersey application review.

¹⁷ See Deloitte Consulting LLP's Hospitality Health application review.

¹⁸ See note 5, *supra*.

¹⁹ *Id.*

The Honorable Kathleen Sebelius

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insider trading case with the Securities and Exchange Commission.²⁰ The consultant also prepared several “separate background investigation summary reports” on employees for several CO-OPs with questionable personnel issues,²¹ but these summaries were not reviewed by Committee staff during the *in-camera* review.

The findings of the *in-camera* review, as outlined above, add to the Committee’s original concerns that the process used to award CO-OP loans was flawed and that taxpayers may lose a significant amount of money awarded through the program.²² To enable the Committee to continue to conduct oversight of CMS’s process for awarding CO-OP program loans, we request that you produce unredacted copies of all of application reviews conducted by Deloitte Consulting LLP as well as all separate background investigation summary reports or other related material prepared for CO-OP applicants. On May 2, 2013, the Committee’s staff requested that CMS produce copies of the Deloitte reviews and summaries to the Committee.²³ Since CMS has continued to refuse to produce this information to the Committee, we are reiterating this request at this time. Please produce this material to the Committee as soon as possible, but no later than 5:00 pm on Thursday, June 11, 2013. If HHS does not produce this material, the Committee will consider use of compulsory process.

In addition, officials from HHS have assured Committee staff that the Department is still working to produce the remainder of our outstanding requests as outlined in earlier letters.²⁴ We first requested this information on October 23, 2012, and again on March 25, 2013, since we had yet to receive a single responsive document.²⁵ We expect HHS to fully comply with the Committee’s earlier requests. The Committee is willing to accept a rolling production of this material as an accommodation to the Department; however, this delay is unacceptable and your lack of transparency is troubling. Accordingly, please produce all responsive material to the Committee’s October 23rd and March 25th requests by June 11, 2013, as well.

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

²⁰ See Deloitte Consulting LLP’s Louisiana Health Cooperative, Inc. application review.

²¹ See, e.g., Deloitte Consulting LLP’s Coordinated Health Plans of Mississippi, Inc. application review.

²² See Letter from Reps. Darrell Issa and Trey Gowdy, H. Cmte. on Oversight & Gov’t Reform, to Kathleen Sebelius, Secretary, Department of Health & Human Services, (Oct. 23, 2012) and letter from Reps. Darrell Issa, James Lankford and Jim Jordan, H. Cmte. on Oversight & Gov’t Reform, to Kathleen Sebelius, Secretary, Dep’t of Health & Human Services, (March 25, 2013).

²³ See email from Committee staff to Jenifer Bollinger, Deputy Director of the Office of Legislation, Center for Medicare and Medicaid Services, (May 2, 2013).

²⁴ See note 16, *supra*.

²⁵ *Id.*

The Honorable Kathleen Sebelius
June 4, 2013
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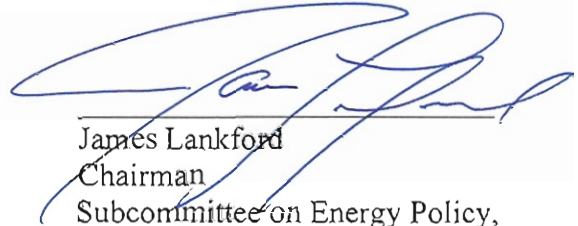
Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

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

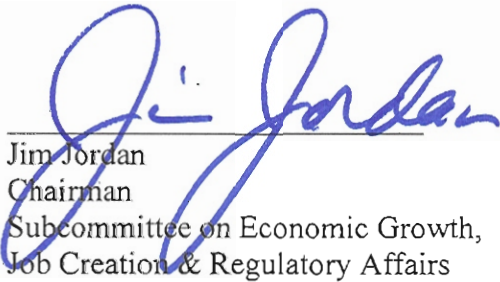
Sincerely,



Darrell Issa
Chairman



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



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

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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

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

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Minority (202) 225-5051

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.