HEALTH INSURANCE CO–OPS: EXAMINING OBAMACARE'S $2 BILLION LOAN GAMBLE

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS

AND THE

SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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HEALTH INSURANCE CO–OPS: EXAMINING OBAMACARE'S $2 BILLION LOAN GAMBLE

Wednesday, February 5, 2014

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC GROWTH, JOB CREATION AND REGULATORY AFFAIRS JOINT WITH THE SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 3:07 p.m., in Room 2154, Rayburn House Office Building, Hon. James Lankford [chairman of the Subcommittee on Energy, Health Care and Entitlements] presiding.

Present: Representatives Lankford, Jordan, Meadows, DeSantis, Speier and Cartwright.

Staff Present: Brian Blase, Majority Professional Staff Member; Molly Boyl, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; David Brewer, Majority Senior Counsel; Katelyn Christ, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Tyler Grimm, Majority Senior Professional Staff Member; Christopher Hixon, Majority Chief Counsel for Oversight; Michael R. Kiko, Majority Legislative Assistant; Jeffrey Post, Majority Professional Staff Member; Laura L. Rush, Majority Deputy Chief Clerk; Katy Summerlin, Majority Press Assistant; Sarah Vance, Majority Assistant Clerk; Rebecca Watkins, Majority Communications Director; Jaron Bourke, Minority Director of Administration; Devon Hill, Minority Research Assistant; Jennifer Hoffman, Minority Communications Director; Jennifer Kreiger, Minority New Media Press Secretary; Suzanne Owen, Minority Senior Policy Advisor; Jason Powell, Minority Senior Counsel.

Mr. LANKFORD. The committee will come to order.

This is an oversight subcommittee of the full Committee on Oversight and Government Reform. We exist to secure two fundamental principles: first, that Americans have a right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have the right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the

facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

This hearing is a continuance of our oversight and the implementation of the Affordable Care Act. It is a multi-billion dollar law that has been passed, so it is appropriate that we continue to have ongoing oversight as it advances. Today we will focus on the operation of Section 1322 of the law, which establishes the Consumer Operated and Oriented Plan, or CO–OP loan plan. The Department of Health and Human Services awarded a total of $2.1 billion to 23 CO–OPs throughout the Country. The CO–OPs receiving these loans have been awarded a portion and two portions of startup loans which are repayable in five years and a low-interest longer term solvency loans, which are repayable in 15 years.

The committee's review of available information on the CO–OP program to date suggests that the loan program is an investment disaster. There is a possibility that the American taxpayers will be left on the hook. That is what we are trying to follow up on today.

Americans are well aware of other loan debacles and accusations of insider cronyism in the last few years. Today we are going to take a serious look at the multi-billion dollar loan program that is the CO–OPs.

First, the HHS Inspector General reported last year that most CO–OPs have exhausted their startup funding and lack private support. Second, even the Obama Administration itself is not showing confidence about the viability of the CO–OP program. The Office of Management and Budget itself projected that the American taxpayers would lose over 40 percent of the funding through the CO–OP program. This means the Administration expects taxpayers to face an $860 million loss from the $2 billion allocated in the CO–OP loans.

Due to these and other concerns, Congress ultimately cut the CO–OP funding to $3.8 billion in 2011. After awarding $2 billion in loans, Congress rescinded the majority of the remaining unobligated funds in 2013.

Third, the committee's investigation highlights serious concerns with the Obamacare CO–OP program. The committee is releasing a staff report today that summarizes preliminary findings from its investigation of this loan program based on this information. I would like to introduce the Majority staff report into the record at this time. Without objection.

Mr. LANKFORD. This report represents two case studies: the Vermont Health CO–OP, which initially received $30 million but dissolved after failing to receive licensure from the State insurer last May; and three of the largest CO–OPs sponsored by Freelancers Union, which received a total of $340 million under the program.

Today we are joined by Ms. Sara Horowitz, thank you for being here very much, the Executive Director and CEO of Freelancers Union. The committee also invited Mitchell Fleischer, the President of the Board of the Vermont Health CO–OP. Mr. Fleischer notified the committee yesterday that he would not appear today and answer questions about the millions of dollars of lost taxpayer funds surrounding the failed company.

We are also joined by three health care policy experts: Dr. Roger Stark of the Washington Policy Center; Mr. Avik Roy of the Manhattan Institute; and Dr. Devon Herrick of the National Center for Policy Analysis; as well as Ms. Jan VanRiper, Executive Director of the National Alliance of State Health CO–OPs. Thank you all for being here. I look forward to hearing the testimony from today's witnesses on the operations of the loan program and how to best guard taxpayer dollars.

With that, I recognize the ranking member of my subcommittee, Ms. Speier.

Ms. SPEIER. Thank you, Mr. Chairman.

Let me begin by saying that I have enjoyed a cordial and constructive working relationship with the Chairman. I believe, Mr. Chairman, that you are an honorable man. I choose to believe that this hearing has been orchestrated by a polarizing, destructive Majority staff that is more interested in scoring political points than in conducting meaningful oversight.

The American people are sick of it, and I am sick of it. The Majority drops this biased, incomplete and unvetted document on my desk 45 minutes before this committee hearing was scheduled to begin, purporting to be the staff report of the committee. No one watching this hearing right now should in any way believe that this is a bipartisan product. I have had no time to fully review or study it, but what I have read is full of conjecture, ad homonym attacks and conspiracy theories.

My cursory reading shows that the report exaggerates routine meetings, misrepresenting them as improper relationship, and accuses the CO–OPs of improper political activity when they only exercise their constitutional right to petition their government and comment lawfully on proposed regulations, just like the dairy farmers or the sugar beet growers did with all of us during the debate on the Farm Bill.

I fear that this document will not stand up to the scrutiny. Otherwise, I would have received it weeks ago, and the full committee would have participated in its drafting. Instead, the majority chose to spend precious tax dollars and staff time focusing on one of 24 CO–OPs that failed to receive licensure and whose outstanding loan represents less than, less than one quarter, one quarter, of 1 percent. They did not receive $30 million, they received $4 million. They were slated to receive $30 million, that never came forward because they were never licensed.

Their analysis of this single CO–OP is also transparently biased and I believe politically motivated. As much as the majority would like to manufacturer a scandal, there simply isn't one. There is no smoking gun. This is no Solyndra. The Majority is trying to use a single, unrepresentative example to sabotage the entire program.

I stand ready and willing to conduct oversight with the Majority in a manner that allows for constructive and thoughtful study and debate. This hearing will do neither, and therefore I will not participate. I yield back.

Mr. LANKFORD. I now recognize Mr. Jordan for an opening statement.

Mr. JORDAN. Mr. Chairman, I would just say, in light of the ranking member's statement, I was tempted to say, making a

mountain out of a molehill, but I don't even see the molehill. Look, either side can release a report. They are not required to notify the other side. In fact, I have a report right here that our staff gave me that Ranking Member Cummings released, a new report on the Benghazi hearing. Today, Elijah Cummings, Ranking Member of the House Committee on Oversight and Government Reform released a new report prepared by Democratic staff. This goes on all the time.

The fact remains, as you pointed out, Mr. Chairman, in your opening remarks, this program is slated to lose 40 percent of the money allocated by the taxpayers. Is that correct?

Mr. LANKFORD. That is correct, and let me mention one thing as well. That is that all the findings from this report were all done in testimony where both the Majority and Minority staff were included, in all of the testimony behind the scenes, and were free to be able to ask questions and be engaged. So either side can create a written report from the findings they have from all the interviews and investigations. I yield back.

Mr. JORDAN. Thank you, Mr. Chairman. And I will dispense with most of my opening statement and just read from a couple of pages here. The Obama Administration projects that taxpayers could lose 40 percent of the loans given out through the CO–OP program, $860 million loss. In fact, one CO–OP has already failed. The Vermont Health Care CO–OP dissolved in May of last year, after the Vermont State insurance regulator denied the CO–OP a license to sell insurance due to serious concerns about their solvency and that cost the taxpayers $4.5 million.

So the reference to Solyndra and the other programs in the loan guaranty program, or other entities in the loan guaranty program that went bankrupt, I think is very appropriate. The committee invited Mr. Fleischer, President of the Board of Vermont Health CO–OP to testify today. The committee sought to hold him accountable to the American taxpayers for the money that the taxpayers lost. But yesterday he said, you know what, I just can't make it. We took taxpayer money, but I just can't come answer to the taxpayers and answer to the United States Congress.

Mr. Fleischer's refusal to testify is concerning the State of Vermont found that Mr. Fleischer's compensation as President of the Board of $126,000 was excessive. Just by way of comparison, the head of the BlueCross BlueShield Board of Vermont makes $29,000 a year. In addition, Mr. Fleischer's refusal to testify prevents the committee from questioning him on what the State of Vermont called a "stark, ever-present conflict of interest." The State insurance regulator found that the company owned by Fleischer agreed to be the exclusive agent of the Vermont CO–OP. The CO–OP paid Mr. Fleischer's company at least $26,000 of taxpayer funds a month as part of his agreement. Between his compensation and his company's exclusive agreement with the Vermont CO–OP, Mitchell Fleischer received a substantial amount of taxpayer revenue. In return, the America taxpayers received nothing but a failed CO–OP.

Mr. Fleischer's appearance today could have gone a long way in shedding light on why Vermont Health failed. It is incredibly dis-

appointing that he chose not to be here and chose not to defend the misuse of taxpayer money.

We are, however, joined by Ms. Sara Horowitz, the CEO and Executive Director of the Freelancers Union. The committee has had several longstanding questions about the process that informed the awarding of $340 million in loans to three companies sponsored by the Freelancers Union. The committee's investigation has shown that this union was not eligible under Obamacare to sponsor CO–OPs due to the Union's insurance company subsidiary. However, the Union successfully, in our judgment, manipulated the regulatory process to avoid the law's prohibition on giving taxpayer money to entities related to existing insurance companies.

After receiving hundreds of millions of dollars in Federal loans, Freelancers Union then used its political connections to the White House to preserve its ability to benefit financially from the CO–OP program. This is what happens when the government picks winners and losers with taxpayer money. We look forward to learning more about all of these issues in today's hearing.

Mr. ISSA. Would the gentleman yield?

Mr. JORDAN. I would be happy to yield to the Chairman.

Mr. ISSA. I thank the Chairman. I will be brief.

I share with both of the chairmen the importance of this hearing, the recognition that this happens in time of war, we rush to do something, we rush to spend money. This committee some years ago under Chairman Waxman recognized that the Bush Administration had flown cargo aircraft full of $20 bills to Iraq, had medium ranking and low ranking officers sign for them and the money had been disbursed, and we really didn't know where it went. So it is not unusual in times of emergency.

But in this case, a bill that had multiple years to be prepared and thought out and then implemented appears to have some of the same loose money, money that cannot be justified or accounted for. I think the importance of this hearing today, notwithstanding the gentlelady from California, Ms. Speier's assertion, is about substantial amounts of taxpayer dollars that are either being used unwisely or in some cases used outside even the letter of the law that was passed.

So I want to thank both chairmen for covering this important issue and believe I am looking forward to the hearing.

In closing, Mr. Chairman, the witness that is not here today, I expect that witness to come before this committee. I would ask that at the conclusion of this hearing that you recess, and not adjourn, because we will reconvene when our witness is available. A witness says they are going to appear before this committee, where we could have and possibly would have issued a subpoena, when they change their mind at the last moment, that is not acceptable. So either through a continuation of this hearing or a deposition process, I expect full compliance with the invitation.

I thank both chairmen and yield back.

Mr. LANKFORD. I would like to recognize the ranking member of the Subcommittee on Economic Growth, Mr. Cartwright, for his opening statement.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And I do thank the witnesses for taking time out to appear today.

This hearing is going to examine the loan program established under the Affordable Care Act to create non-profit, member-focused health insurance CO–OPs, or Consumer Operated and Oriented Plans, in several States. The CO–OP program is an investment in health care innovation. It is an investment designed to increase market competition and consumer choice which drives down prices to consumers, something that we should all want more of.

I had looked forward to the testimony of Sara Horowitz, the CEO of a sponsor of three CO–OPs, and a winner of the MacArthur genius award for social innovation. I thank you for coming today. I had also looked forward to the testimony of Dr. Jan VanRiper, the Executive Director of the National Alliance for State Health CO–OPs, to give us a big picture view of the 23 successful CO–OPs operating today in both red and blue States.

However, I regretfully inform you that I will not be hearing this testimony today. The Majority released this 28-page report they have written on CO–OPs exactly one hour before the hearing was supposed to start. No Democrats had seen this report before its release. Look, the American public wants us to work together. They are hungry for Democrats and Republicans to work together. This is not working together. This is not a report that was generated just recently. It is perfect. It is 28 pages that has 136 footnotes. There is not a typo to be seen in there. This is the type of report that took weeks to prepare and to dump it on us an hour before the hearing——

Mr. LANKFORD. Would the gentleman yield?

Mr. CARTWRIGHT. obviously a well thought-out attempt to just completely skew this process. We in America, we are used to something called due process. Due process means you have notice and an opportunity to be heard so that you don't just get one side of the story every time. That is what this is. This is the one side of the story. And to give the Democrats on this committee one hour to prepare for this hearing is ridiculous. Sadly, it is not the first time this has happened. It has become the standard operating procedure for the Majority on this committee. Republicans and Democrats alike are constantly talking about how they want to work with folks on the other side of the aisle. I would say to my colleagues, if you want to work with us, we are here. You have our emails, you have our phone numbers. We work just down the hall from each other in the same office building. Send us the report. We are happy to look at it. We don't care if it is not properly paginated or has typos in it, we want to get some notice of these things ahead of time so we can sit down and have a civil, informed and bipartisan discussion about these important matters.

I can't sit through a hearing where we are going to talk about a report that none of the Democrats have had a chance to read and pretend that this is the way that we should be doing things here in Congress. The American people expect more than this of us and they deserve more than this of us. And I yield back.

Mr. LANKFORD. Would the gentleman yield in conversation?

Mr. CARTWRIGHT. I did.

Mr. LANKFORD. The challenge that I have of this, do you know of any testimony that occurred or any interviews that occurred that both the Majority and the Minority staff were not involved with? Were you excluded from any of the interviews at all?

Mr. CARTWRIGHT. We got this report one hour before the hearing. I would like to see which one of you who will stand up and say we could not have been given this with much more notice.

Mr. LANKFORD. My challenge of this is for me personally, it has the feeling of, our staff worked hard on a hearing that had public notice, that obviously this hearing was coming, what the topic was about, there were interviews that had happened over the past year to all these individuals doing the background. It feels like there is a frustration that our staff prepared for it and our staff did not prepare for it. We did a repot and you all didn't. And you are walking into the hearing not ready. And that is what I am trying to figure out.

I am glad for the conversation because the bulk of the conversation today, the testimony of these five folks, is not about our report. Now, we prepared a report to get ready for this hearing, but we came to this hearing not to talk about the report, but to receive witness testimony. We would be honored for you to be a part of the witness testimony.

Mr. CARTWRIGHT. Will the Member yield?

Mr. LANKFORD. Absolutely, sir.

Mr. CARTWRIGHT. Mr. Chairman, I am not here to protest the facts and the opinions here to be given by these fine people. I am here protesting the one thing and the one thing alone, and that is this report that was dumped on us with—it is absolutely unfair. And I will not be a part of something that involves this level of unfairness. It just doesn't make sense and I feel that it is un-American.

Mr. LANKFORD. I feel like you were involved in every single interview. We just wrote up a report of what we heard in those interviews and the facts that we had gathered. And I am sorry that your staff did not also pull together the facts that they had gathered and also release a report. Because that would be very appropriate, for our staff to work on it, for your staff to work on it and for us to come and hear the testimony of the people that are coming to bring testimony.

Mr. CARTWRIGHT. Mr. Chairman, I protest conducting business in this fashion. I think I have expressed myself fully and I am going to excuse myself now.

Mr. JORDAN. Mr. Chairman?

Mr. LANKFORD. Yes, sir.

Mr. JORDAN. I Ask unanimous consent to enter into the record a report the Minority released in September of last year regarding the Benghazi investigation.

Mr. LANKFORD. Without objection.

It is common practice for any Member to be able to come and bring a newspaper article, bring a report, bring whatever may be, and to introduce it into the record as a part of the hearing. That happens every single hearing I have been at, with very few exceptions, that a Member doesn't show up, hold up a newspaper article

and say, I read this, this is about this hearing, I would like to submit it for the record and we don't have advance notice at all.

So it seems a little unusual that we prepared for a hearing and the other side didn't prepare for the hearing and they are upset with that. So with that, I would like to be able to hear the testimony of our witnesses, and I do appreciate your coming here. I apologize for the theatrics that are going on. But we do want to get to your statements and the work that you have done. Because you have all brought also written testimony, and you are bringing oral testimony as well. For that, we appreciate you.

Members will have seven days to submit opening statements, if any Member would like to submit an opening statement for the record.

Mr. Devon Herrick, Senior Fellow at the National Center for Policy Analysis; Dr. Roger Stark, who is a retired physical and health care policy analyst at the Washington Policy Center; Ms. Sara Horowitz is the Executive Director and CEO of the Freelancers Union; Mr. Avik Roy is a Senior Fellow at the Manhattan Institute; Ms. Jan VanRiper is Executive Director and CEO for the National Alliance of State Health CO–OPs. We are glad that you are here.

Pursuant to committee rules, all witnesses are sworn in before they testify. If you would please rise and raise your right hands.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

[Witnesses respond in the affirmative.]

Mr. LANKFORD. Thank you. You may be seated. Let the record reflect that the witnesses have all answered in the affirmative.

In order to allow time for discussion, I would ask you to limit your oral testimony to about five minutes. There is a clock in front of you on that, that you will be able to see as part of that. We are glad to be able to receive your testimony.

Dr. Harrick?

WITNESS STATEMENTS

STATEMENT OF DEVON HERRICK

Mr. HERRICK. Chairman Lankford, Chairman Jordan and members of the committee, I am Devon Herrick, I am a health economist and senior fellow at the National Center for Policy Analysis. The NCPA is a public policy research institute.

Thank you for allowing me to share my thoughts, and I look forward to your questions.

Consumer Operated and Oriented Health Plans, otherwise known as CO–OPs, as they are commonly known, were a political compromise in 2009 during the health care debate. Congressional support for CO–OPs was primarily because they could serve a political purpose. Whether or not CO–OPs could serve an economic purpose or were economically viable received less scrutiny at the time.

Proponents envisioned CO–OPs as an alternative to a public plan option that progressives hoped would boost competition with legacy health insurance companies. In a nutshell, the only real purpose for the CO–OPs was a political compromise that served its purpose

in 2009 but was never really politically viable. This is a conclusion that is shared by both critics on the left and the right. For example, Nobel Laureate Paul Krugman called CO–OPs a sham. In interviews, Senator Jay Rockefeller referred to CO–OPs as a dying business model for insurance, arguing that we had tried this nearly a hundred years ago, and they largely failed.

Yet proponents continue to view CO–OPs through rose-colored glasses, hoping that they would do what for-profit insurers supposedly fail to do: put patients ahead of profits. Indeed, the Office of Inspector General fears that the member-owned aspect of CO–OPs could undermine them, as members demand low premiums at the expense of financial viability.

CO–OP proponents' political agenda further doomed their chances for survival. As we have all heard, advocates for public health coverage have long complained the profits and advertising just serve no other purpose than to push up the cost of premiums and that they are really unnecessary. So of course, CO–OPs were dreamed up as a non-profit entity that couldn't use any of their startup government funding to advertise to reach out to potential customers. With little access to the equity markets and without being able to use their startup funds to communicate they had little chance of success.

Furthermore, CO–OPs are barred from competing in the large group lucrative employer markets. Instead, they have to compete for the individual market and the small group market. This is the most risky segment of the insurance market.

Furthermore, CO–OPs are likely to suffer from adverse selection, which is attracting more sick people than healthy ones. This is especially true with the troubles we have seen with the rollout of the health insurance exchanges.

According to the actuarial firm Milliman, starting a non-profit health insurer is no easy task. And making that a non-profit CO–OP adds additional complexity. Finally, with no claims data, no idea of who will enroll or how many will enroll or the age of the enrollees, it will be very difficult to accurately assess risk and price of premiums. Furthermore, CO–OPs have a limited opportunity to gain market share needed to have financial viability. And without advertising dollars, they find it very difficult to reach out to their customers, and with the exchanges not working well, they have problems attracting anyone except those who seek them out, and of course, the people who tend to seek out insurance are those who have higher health costs.

Moreover, the exchange problems and stop-gap fix, which is allowing insurers to sign up enrollees directly further disadvantages CO–OPs. Moreover, the selection process of awarding loans appears to contain an element of cronyism.

Congress wisely decided to require loans with strict repayment schedules rather than making grants directly. But this may do little to ensure the safeguarding of taxpayer funds. The Administration has all but admitted that the CO–OPs are risky with more than one-third of the 15-year solvency loans expected to go into default, and 40 percent of the five-year startup loans going into default. This estimate was made before the recent problems with the exchanges came to light.

In conclusion, as with most ill-conceived, under-capitalized ventures run by inexperienced management teams following an outdated business model, health insurance CO–OPs will most likely muddle along until they run out of taxpayer money, and I expect this will be how most of them will end. Thank you.

[Prepared statement of Mr. Herrick follows:]

Consumer Oriented and Operated Plans: An Idea whose Purpose has Come and Gone

Statement of

Devon M. Herrick, Ph.D.

Senior Fellow
National Center for Policy Analysis

Committee on Oversight & Government Reform
Subcommittee on Energy Policy, Health Care and Entitlements
and the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

Health Insurance CO-OPs: Examining ObamaCare's $2 Billion Loan Gamble

February 5, 2014

Chairman Lankford, Chairman Jordan and Members of the Committee, I am Devon Herrick, a Senior Fellow at the National Center for Policy Analysis, a nonprofit, nonpartisan public policy research organization dedicated to developing and promoting private alternatives to government regulation and control, solving problems by relying on the strength of the competitive, entrepreneurial private sector. I welcome the opportunity to share my views and look forward to your questions.

Consumer Oriented and Operated Plans, or health insurance CO-OPs as they're commonly known, were a political compromise dreamed up in 2009 during the health care debate.[1] Congressional support for CO-OPs was primarily because they could serve a political purpose. Whether or not CO-OPs could serve an economic purpose — and are economically viable — seemed to draw less scrutiny at that time. Proponents envisioned CO-OPs as an alternative to a *public plan option,* which Progressives advocated as a means to boost competition with established insurance companies.[2]

Health insurance CO-OPs were chosen to fill a "middle-ground" of sorts that would appeal to moderate voters, some of whom might be turned off by a government-sponsored public plan. In a nutshell, this explains the only real purpose for CO-OPs; a political alternative that served its purpose in 2009, but is no longer needed; and was never economically viable.

This is the conclusion of critics both on the Left and the Right. Nobel Laureate, Paul Krugman called CO-OPs a "sham," saying... "And let's be clear: the supposed alternative, nonprofit co-ops, is a sham. That's not just my opinion; it's what the market says..." "Clearly, investors believe that CO-OPs would offer little real competition to private insurers."[3] In interviews, Senator Jay Rockefeller expressed the same sentiment, referring to CO-OPs as a "...dying business model for insurance," arguing "...there has been no significant research into consumer co-ops as a model for the broad expansion of health insurance. What we do know, however, is that this model was tried in the early part of the 20th century and largely failed."[4]

Proponents viewed CO-OPs through rose-colored glasses. CO-OPs were envisioned as a type of non-profit, enrollee-owned mutual insurance company that would do what for-profit insurers supposedly refused to do — put the needs of people over profit.[5] The member-led plans would

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[1] James T. O'Connor, "Comprehending the compromise: Key considerations in understanding the co-op as an alternative to the public plan," Milliman, Inc., June 26 2009. Available at: http://www.milliman.com/insight/healthreform/Comprehending-the-compromise-Key-considerations-in-understanding-the-co-op-as-an-alternative-to-the-public-plan/.

[2] Julia James, et al., "Health Policy Brief: The CO-OP Health Insurance Program," *Health Affairs*, updated January 23, 2014. http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=107.

[3] Paul Krugman, "Obama's Trust Problem," *New York Times*, August 20, 2009. Available at: http://www.nytimes.com/2009/08/21/opinion/21krugman.html.

[4] "Rockefeller Decimates Co-ops in Letter to Baucus and Grassley," Daily Kos, September 16, 2009. http://www.dailykos.com/story/2009/09/16/782985/-Rockefeller-Decimates-Co-ops-in-Letter-to-Baucus-and-Grassley.

[5] Department of Health and Human Services, 45 CFR Part 156 [CMS–9983–F] RIN 0938–AQ98 "Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO–OP) Program," *Federal*

feature all the latest patient-centered fads, despite little evidence these fads were cost-effective or would make a difference. One plan in New York waives all cost sharing for primary care and primary care services. Members don't even have to meet a deductible first.[6] Indeed, that's a deal most of people would welcome — if it can be sustained while keeping premiums affordable. The Office of Inspector General fears the member-owned aspect of CO-OPs would result in low-premiums at the expense of financial viability.

Proponents hoped CO-OPs would outperform established, for-profit insurers and undercut their premiums. In retrospect this idea was rather naïve. CO-OP proponents' political agenda overshadowed the economic purpose — dooming what little chance of survival CO-Ops ever had.[7] For instance, advocates of public health coverage have long complained that insurance company profits and marketing waste money and drive up premiums. As a result, CO-OPs were designed as non-profit organizations and barred from using federal startup funds to advertise and market their plans. But without access to equity markets and advertising dollars, CO-OPs are doomed to failure.

The low-hanging fruit in the insurance business is large group employer plans. CO-OPs are barred from competing for large groups. Co-OPs can only compete in the individual and small group market — the most risky segment of the health insurance market, according to Robert Laszewski, a well-known insurance industry consultant.[8] Avik Roy, a public policy analyst affiliated with both Forbes.com and the Manhattan Institute, also points out that CO-OPs are likely to suffer from an insurance industry problem, *adverse selection* — attracting more sick people than healthy ones. Lacking experience and the ability to use startup funds for marketing; and ongoing problems with the exchanges; all culminate into the problem where the only people who have an incentive to seek out coverage are those who cannot get affordable individual coverage outside the exchange because of pre-existing health conditions.

According to actuarial firm, Milliman, starting a non-profit health insurer is no easy task; but establishing a non-profit CO-OP adds additional complexity.[9] According to an HHS Office of Inspector General report, "CO-OPs face tight timeframes, market uncertainty, and other challenges." Despite few initial enrollees, CO-OPs still need the costly infrastructure in place the day they open for business — preferably in time to sell policies on the exchanges. CO-OPs need

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Register, Vol. 76, No. 239, December 13, 2011 pp. 77392 – 77415. Available at http://www.gpo.gov/fdsys/pkg/FR-2011-12-13/pdf/2011-31864.pdf.

[6] Michelle Andrews, "Health Insurance Co-Ops Offer New Option for Some Marketplace Shoppers," Kaiser Health News, October 15, 2013. Available at: http://www.kaiserhealthnews.org/features/insuring-your-health/2013/101513-michelle-andrews-insurance-co-ops-in-the-health-law.aspx.

[7] Jerry Markon, "Health Co-Ops, Created to Foster Competition and Lower Insurance Costs, Are In Danger," Washington Post, October 22, 2013. http://www.washingtonpost.com/politics/health-co-ops-created-to-foster-competition-and-lower-insurance-costs-are-facing-danger/2013/10/22/e1c961fe-3809-11e3-ae46-e4248e75c8ea_story.html.

[8] Christopher Weaver, "HHS Sets Rules for Consumer-Controlled Health Plans," Kaiser Health News, Jul 18, 2011. Available at: http://www.kaiserhealthnews.org/Stories/2011/July/19/coop-health-plans-hhs.aspx.

[9] Courtney White, Health Insurance Co-Ops: Challenges and Opportunities. Milliman, July 2011. Available at: http://www.milliman.com/uploadedFiles/insight/healthreform/health-insurances-co-ops.pdf.

to assemble provider networks; and educate doctors and hospitals on how they are different than commercial insurers and non-profit insurers.[10] The best examples of successful CO-OPs that preceded the Affordable Care Act 50 years operate on the prepaid-HMO model.[11] An integrated HMO requires more infrastructure than merely underwriting risk, enrolling customers and paying claims.

Finally, with no prior claims data, and no idea who will enroll (or how many enrollees), CO-OPs will find it difficult to accurately assess risk and price premiums.[12] With the exchanges off to a rocky start, many CO-Ops found they had no way to reach potential customers. The actuarial firm Milliman believes CO-Ops have a limited window of opportunity and need to gain market share early to be financially viable.[13] Moreover, the exchange problems and the stopgap fix – allowing insurers to sign up customer directly — disadvantaged CO-OPs even more.[14]

The selection process and awarding of loans appears to contain an element of political cronyism. Common Ground, an affiliate of the Industrial Areas Foundation, a well-known network of community organizers, was awarded $56 million in 2012.[15] The Freelancers Union, an 11-year old organization of freelance workers and sole proprietorships that has progressive roots and activist ties received the largest grant made. The organization received $341 million despite questionable eligibility.[16] The Freelancers Union already sponsored a for-profit member owned insurance company. This topic has been investigated by this committee in the past so I won't comment further than to say, although it's understandable that Administration officials would view past experience as an asset, one has to wonder a grant proposal from a similar organization with conservative ties would have been viewed as favorably.

Congress wisely decided rather than make grants directly to CO-OPs, it would instead require loans with repayment schedules. This was a wise move — although it may do little to ensure taxpayer funds are repaid rather than defaulted on. The best decision to ensure taxpayers' funds are not lost was the decision by Congress to cut CO-OP's funding. Of the original $6 billion allocated in startup funding for CO-OPs, Congress reduced that by $2.4 billion in 2011. The

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[10] HHS Office of Inspector General, "Early Implementation of the Consumer Operated and Oriented Plan Loan," U.S. Department of Health and Human Services. Program, Report OEI-01-12-00290, July 2013. Available at: https://oig.hhs.gov/oei/reports/oei-01-12-00290.pdf.

[11] Julia James, et al.,

[12] Ibid.

[13] Shyam Kolli, "How Can CO-OPs Gain Market Share?" Milliman, May 2012. Available at: http://publications.milliman.com/periodicals/co-op-point-of-view/pdfs/co-op-05-14-12.pdf.

[14] Caroline Humer, "Small health insurers fear Obamacare woes will tilt playing field," Reuters, November 20, 2013. http://www.reuters.com/article/2013/11/20/us-usa-healthcare-insurers-idUSBRE9AJ09C20131120.

[15] Guy Boulton, "Nonprofit health insurer lands federal loan," (Milwaukee) Journal Sentinel, February 21, 2012. http://www.jsonline.com/business/nonprofit-health-insurer-lands-federal-loan-rm49ho7-139863553.html.

[16] Alex Wayne, "Union for Independent Contractors to Offer Health Insurance," *Business Week*, February 24, 2012. Available: http://www.businessweek.com/news/2012-02-24/union-for-independent-contractors-to-offer-health-insurance.html.

American Taxpayer Relief Act of 2012 further cut funding to $1.98 billion. The recipients were 24 co-ops in 24 states.[17]

The Office of Inspector General audit found the opportunities for CO-OPs to obtain private funding are very limited.[18] This suggests banks and financial institutions don't consider CO-OPs a good risk. Taxpayers and Congress both have reason to worry. Nearly a dozen CO-OPs are failing or have already failed. Eleven of sixteen CO-OPs that OIG investigated have startup costs that exceed their available startup funding.[19] If they go under, taxpayers will lose $1 billion in loans. This represents about half the co-ops in existence.

The Administration has all but admitted CO-OPs are risky. It estimated that between one-third to one-half the nearly $2 billion of the federal funding lent to CO-OPs is at risk of default. In 2011 the government estimated that more than one-third of the 15-year Solvency Loans (35 percent), and 40 percent of the 5-year, Startup Loans, would ultimately go into default.[20] And this estimate was made before the most recent problems with the exchanges came to light! Considering problems getting the state and federal exchanges up and running smoothly, this initial estimate is probably much too low.

In conclusion, as with most ill-conceived ventures run by inexperienced or undercapitalized management teams, health insurance CO-OPs will likely muddle along until they run out of taxpayers' money.

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[17] HHS Office of Inspector General, "The Centers for Medicare & Medicaid Services Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed," U.S. Department of Health and Human Services, Report A-05-12-00043, July 2013. Available at: https://oig.hhs.gov/oas/reports/region5/51200043.pdf.

[18] Ibid.

[19] Ibid.

[20] Department of Health and Human Services, "Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO–OP) Program," *Federal Register*, Vol. 76, No. 139, July 20, 2011, p. 43246. Also see Harris Meyer, "Feds Jump-Start Health Insurance Co-Ops With Loans," Kaiser Health News, February 21, 2012. http://www.kaiserhealthnews.org/Stories/2012/February/21/health-coop-cooperatives-federal-loans.aspx. Also see Darrell Issa and Trey Gowdy, Letter to Sara Horowitz, Committee on Oversight and Government Reform, U.S. Congress, October 2, 2012. http://www.kaiserhealthnews.org/Stories/2012/February/21/health-coop-cooperatives-federal-loans.aspx.

Mr. LANKFORD. Dr. Stark?

STATEMENT OF ROGER STARK

Dr. STARK. Chairman Lankford, Chairman Jordan and members, thank you for this opportunity to testify this afternoon.

As background, Consumer Operated and Oriented Plans, or CO–OPs, have been part of the American health care delivery system since 1929. Although all the plans that existed during the Great Depression have closed, a few large CO–OPs formed during or shortly after World War II are still in existence. Thousands of non-health care CO–OPs serve American consumers every day in areas such as agriculture, utilities and credit unions. A CO–OP is designed to be self-owned and to be of benefit to its members. Governance is through a board member, and CO–OPs are not for profit.

As mentioned, CO–OPs were authorized in Section 1322 of the Affordable Care Act and were placed in the ACA as a compromise to the public option health insurance plan. To date, Federal loans have been given to 24 new CO–OPs. One of these 24 is closed because it could not satisfy State insurance regulations. It is not clear how its original loans will be repaid. Ten other CO–OPs are projecting financial problems.

The overriding concern with the CO–OPs allowed in the Affordable Care Act is financial solvency. The Federal loans cannot be used for marketing. These CO–OPs are essentially new insurance companies that are starting from scratch. They will need a very significant amount of private money or a very large enrollment premium base to guarantee solvency. Without the ability to formally advertise, many will need to rely on grassroots efforts to enroll a large number of people in a short time frame.

The inefficient rollout of the health insurance exchanges has also been a disadvantage for the CO–OPs. Whether they are called accountable care organizations or medical homes, the integrated care models given priority in the new CO–OPs are essentially health maintenance organizations, or HMOs. From my personal experience and from broad experience with HMOs in the 1980s and 1990s, using primary care doctors as gatekeepers can save money by rationing care. Obviously, this is not always in the patient's best interest.

CO–OPs will need to establish provider networks. To have a hope of remaining financially competitive, they will in all likelihood be forced to offer providers lower payment rates than established insurance companies will offer. This will be a definite disadvantage in recruiting networks of doctors and hospitals.

CO–OPs will have to deal with the insurance regulations in the Affordable Care Act. Legacy insurance companies are having a difficult time accurately pricing premiums with the mandates of community rating and guaranteed issue. Without historical actuarial data, new CO–OPs will have no idea where to set plan prices. Without substantial reserves, a few large claims will put them at an extremely high risk for financial failure. This may not reveal itself for a few years.

As they do experience growing financial difficulty, the CO–OPs will have two choices. The first would be to default on the $2 bil-

lion already loaned by the Federal Government. The mechanism for recapturing this money is unclear. The second choice would be to go back to the Federal Government and ask for more taxpayer dollars. If this choice was successful, and more taxpayer money was given out, CO–OPs would truly be a public option.

Thank you very much. I look forward to your questions.

[Prepared statement of Dr. Stark follows:]

WASHINGTON
POLICY CENTER
for health care

CONGRESSIONAL TESTIMONY February 5, 2014

Roger Stark, MD, FACS

Background

Consumer operated and oriented plans, or CO-OPs, have been part of the American health delivery system since 1929. Although all of the plans that existed during the Great Depression have closed, a few large health CO-OPs formed during, or shortly after, World War II are still in existence.

Thousands of non-health care CO-OPs serve American consumers every day in areas such as agriculture, utilities and credit unions. A CO-OP is designed to be self-owned and be of benefit to its members. Governance is through a member-board and CO-OPs are not-for-profit.

CO-OPs in the Affordable Care Act – Section 1322 [1]

CO-OPs were placed in the Affordable Care Act (ACA) as a compromise to the "public option" health insurance plan. The stated goal is to increase competition and consumer choice in the health insurance exchanges. Two thirds of policies must be sold in the individual and small group markets and silver and gold plans must be offered. CO-OPs must comply with all state insurance laws and regulations. They must be governed by members and have a strong consumer focus. "Integrated" health care delivery models are given priority. These "creative" delivery systems are fundamentally new versions of health maintenance organizations (HMO) that have existed for years.

Initial funding is through two types of federal government loans given at favorable rates. Start-up loans must be repaid within five years and solvency, or reserve, loans must be repaid within fifteen years. The sponsoring group must provide 40% of funds (excluding the federal loans) and no more than 40% of funding can come from state or local governments. CO-OPs can not receive more than 25% of funds from an insurance carrier that existed prior to July 16, 2009. CO-OPs must be very efficient and show a medical loss ratio of 95%.

CO-OPs as of January, 2014

To date, federal loans have been given to 24 new CO-OPs. One of these 24 has closed because it could not satisfy state insurance regulations. It is not clear how its original loans will be repaid. Ten others are projecting financial problems.

[1] http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=87

The original ACA called for $6 billion in loans to new CO-OPs. This was cut to $3.4 billion in the broad budget cut of 2011 and further reduced to $2 billion in the "fiscal cliff" negotiations of 2013. Forty applications were withdrawn because of the budget cuts.[2]

Policy Analysis

The overriding concern with the CO-OPs allowed in the ACA is financial solvency. The federal loans can not be used for marketing, clinical services or capital purchases. These CO-OPs are essentially new insurance companies that are starting from scratch. They will need a very significant amount of private money or a very large enrollment premium-base to guarantee solvency. Without the ability to formally advertize, many will need to rely on grass-roots efforts to enroll a large number of people in a short time frame. The inefficient roll-out of the health insurance exchanges has also been a disadvantage for CO-OPs.

Whether they are called accountable care organizations or medical homes, the "integrated" care models given priority in the new CO-OPs are essentially health maintenance organizations (HMO). From my personal experience and from broad experience with HMOs in the 1980s and 1990s, using primary care doctors as gate-keepers can save money by rationing care. Obviously, this is not always in the patient's best interest.

CO-OPs will need to establish provider networks. To have a hope of remaining financially competitive, they will, in all likelihood, be forced to offer providers lower payment rates than

[2] http://www.washingtonpost.com/politics/health-co-ops-created-to-foster-competition-and-lower-insurance-costs-are-facing-danger/2013/10/22/e1c961fe-3809-11e3-ae46-e4248e75c8ea_story.html

established insurance companies will offer. This will be a definite disadvantage in recruiting networks of doctors and hospitals.

CO-OPs will have to deal with the insurance regulations in the ACA. Legacy insurance companies are having a difficult time accurately pricing premiums with the mandates of community rating and guaranteed issue. Without historical actuarial data, new CO-OPs will have no idea where to set plan prices. Without substantial reserves, a few large claims would put them at an extremely high risk for financial failure.

As they do experience growing financial difficulty, the new CO-OPs will have two choices. The first would be to default on the $2 billion already loaned by the federal government. The mechanism for re-capturing this money is unclear. The second choice would be to go back to the federal government and ask for more taxpayer dollars. If this choice was successful and more taxpayer money was given out, CO-OPs would truly be a "public option."

Mr. LANKFORD. Thank you.
Ms. Horowitz?

STATEMENT OF SARA HOROWITZ

Ms. HOROWITZ. Chairman Jordan, Chairman Lankford, and members of the committee, thank you for the opportunity to appear before you today to discuss Freelancers Union sponsorship of three CO–OPs.

I would like to begin by making three overarching points. First, we have strived to be open and transparent throughout the CO–OP application and launch process. This open book approach has carried over into our dealings with this committee over the last 16 months.

Second, Freelancers Union was well qualified, perhaps the most qualified organization to serve as a sponsor of the CO–OPs. We were chosen to be a sponsor on the merits. Prior to the enactment of the Affordable Care Act, Freelancers Union built, from the ground up, a successful, member-focused health insurance company. We leveraged that same experience and expertise in sponsoring the CO–OPs to put them in a position to deliver services on time and on budget.

Third, despite the many challenges Freelancers Union faced in building three insurance entities from scratch, we did everything we said we would do to help those CO–OPs launch successfully and to move them quickly to self-sufficiency. And it worked. The CO–OPs we sponsored launched on time as independent entities. It is no accident that the Freelancers Union sponsored three CO–OPs. We believe that the goals of the CO–OP program were compatible with our own.

By way of background, Freelancers Union is a non-profit, social purpose organization working to serve the nearly 42 million independent workers that make up the new American workforce. To be clear, we are not a traditional labor union, as that term is generally understood. Rather, we are a trade association of sorts for independent workers. Since our inception, we have pioneered innovative ways to use market solutions to support independent workers who go from job to job, gig to gig and project to project. In essence, our motto is DIY, do it yourself.

Developing sustainable programs to benefit independent workers is core to who we are and what we do. I am proud of our 15-year history of providing services, including health insurance, to local communities, micro-entreprenurials and independent workers. This is also not the first time we have been called to service. We were the third largest grantee chosen to provide benefits for the 9/11 Fund, helping workers who lost their jobs as a result of the attacks.

Because of the successful work we performed for the 9/11 Fund, the American Red Cross called upon us to provide benefits to individuals who had either been in one of the towers or who had lost a loved one in the attack.

Also in 2001, the Freelancers Union started a portable benefits network which eventually led to the creation of the Freelancers Insurance Company in 2009. To promote FIC's sustainability, Freelancers Union broke new ground in the health insurance market-

place, working with all interested constituencies to overcome a great number of market, practical and regulatory obstacles. The truth is, we could not have done it without the tireless advocates on both sides of the political aisle in New York. But that is how we operate. We work to achieve social goals, not to make political statements.

FIC is now providing over 25,000 New Yorkers and their families with high quality, affordable health insurance tailored to meet their needs. As a result of the successful health care model that we established in New York, Freelancers Union was uniquely positioned to help launch three independent CO–OPs, each of which has, again, launched on time and on budget. Their successful launch was made possible in part by providing all three CO–OPs with common backend processes and infrastructure that would enable them to grow and be independent.

However, it is important to understand that while Freelancers Union sponsored and fully supports the mission of the CO–OPs to provide affordable health coverage options, we do not own or operate them. The CO–OPs are independent entities with their own boards, leadership and management. As a sponsor, we helped establish the CO–OPs and get them up and running, applying the same innovation and creativity that defines Freelancers Union's CO–OP initiative. Our work was designed and did promote their independence.

As we have made clear to the CO–OPs, our role as sponsor has ended.

Thank you for the opportunity to testify. I appreciate the committee's interest and I welcome any questions you might have.

[Prepared statement of Ms. Horowitz follows:]

Testimony of Sara Horowitz
Founder and Executive Director, Freelancers Union
Before the House Oversight and Government Reform Committee
Subcommittee on Economic Growth, Job Creation & Regulatory Affairs and
Subcommittee on Energy Policy, Health Care and Entitlements

February 5, 2014

Chairman Jordan, Chairman Lankford, Ranking Member Cartwright, Ranking Member Speier, and members of the Committee: Thank you for the opportunity to appear before you today to discuss Freelancers Union's sponsorship of three CO-OPs.

I would like to begin by making three overarching points regarding Freelancers Union's sponsorship of the CO-OPs:

First, we have strived to be open and transparent throughout the CO-OP application and launch process. This "open book" approach has carried over into our dealings with this Committee over the last 16 months.

Second, Freelancers Union was well-qualified—perhaps the most qualified organization—to serve as a sponsor of the CO-OPs. And we were chosen to be a sponsor on the merits. Prior to the enactment of the Affordable Care Act, Freelancers Union built from the ground up a successful, member-focused health insurance company. As part of that process, Freelancers Union worked with both Republicans and Democrats in New York State to overcome a great many market, practical, and regulatory obstacles. We leveraged that same experience and expertise in sponsoring the CO-OPs to put them in a position to deliver quality services on time and on budget.

> Third, despite the many challenges Freelancers Union faced in building three insurance entities from scratch, we did everything we said we would do to help these CO-OPs launch successfully and to move them quickly to self-sufficiency. And it has worked. The CO-OPs we sponsored launched on time, as independent entities.

It is no accident that Freelancers Union sponsored three Affordable Care Act CO-OPs; we believed that the goals of the CO-OP program were compatible with our own. By way of background, Freelancers Union is a non-profit, social-purpose organization working to serve the nearly 42 million independent workers that make up the new American workforce. To be clear, we are *not* a traditional labor union as that term is generally understood. Rather, we are a trade association, of sorts, for *independent* workers. Since our inception, we have pioneered innovative ways to use market solutions to support independent workers who go from job to job, gig to gig, and project to project. In essence, our model is DIY – Do It Yourself.

Independent workers are confronted with numerous challenges that the traditional workforce does not face, including the lack of easy and affordable access to benefits. A big part of Freelancers Union's mission is to address these challenges by developing entrepreneurial ways to leverage market principles to support independent workers.

Developing sustainable programs to benefit independent workers is core to who we are and what we do. I am proud of our 15-year history of providing services—including health insurance—to local communities, micro-entrepreneurs, and independent workers.

This is also not the first time we have been called to service. We were the third-largest grantee chosen to provide benefits for the 9/11 Fund, helping workers who

lost their jobs as a result of the attack. As a result of the successful work we performed with the 9/11 Fund, the American Red Cross called upon us to provide benefits to individuals who had either been in one of the Towers or had lost a loved one in the attack.

Also in 2001, the Freelancers Union started a Portable Benefits Network, which eventually led to the creation of the Freelancers Insurance Company ("FIC") in 2009. To promote sustainability, FIC utilized and leveraged market efficiencies to provide freelance entrepreneurial workers with the same benefits and at the same prices—or better—as their counterparts working for larger, more established companies.

To make FIC successful, Freelancers Union broke new ground in the health insurance marketplace, working with all interested constituencies to overcome a great number of market, practical, and regulatory obstacles. The truth is, we could not have done it without tireless advocates on *both* sides of the political aisle in New York. But that is how we operate; we work to achieve social goals, not to make political statements.

FIC is now providing over 25,000 New Yorkers and their families with high-quality and affordable health insurance tailored to meet their needs.

As a result of the successful health care model that we established in New York through FIC, Freelancers Union was uniquely positioned to help launch three independent CO-OPs, each of which has—again—launched on time and on budget. Their successful launch was made possible, in part, by providing all three CO-OPs with common back-end processes and infrastructure that would enable them to grow and be independent. By pooling resources and, therefore, leveraging internal economies of scale, we were able to do this cost-effectively.

However, it is important to understand that while Freelancers Union sponsored and fully supports the mission of the CO-OPs to provide affordable health coverage options, we do not own or operate them. The CO-OPs are independent entities with their own Boards, leadership and management. As a sponsor, we helped establish the CO-OPs and got them up and running; but our work was designed to—and did—promote their independence. As we have made clear to the CO-OPs, our role as sponsor has ended.

We've come a long way since we first applied to be a CO-OP program sponsor. We applied the same innovation and creativity that defines Freelancers Union to the CO-OP initiative. We're proud of the role we played in helping the CO-OPs lay a foundation to launch as independent entities, and we hope that the work we have done will help more Americans get the healthcare that they need.

Again, thank you for the opportunity to testify here before you today. I appreciate the Committee's interest in these programs and I welcome any questions you might have.

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Mr. LANKFORD. Thank you, Ms. Horowitz.
Mr. Roy?

STATEMENT OF AVIK ROY

Mr. ROY. Chairman Lankford, Chairman Jordan, members of the Oversight Committee, thanks for inviting me to speak with you today about the Affordable Care Act's CO–OP program. As others have described, CO–OPs were introduced as a substitute for the so-called public option by Senator Kent Conrad. The idea was that CO–OP plans, shorn of the profit motive, would offer lower premiums than traditional insurers.

However, I regret to report that there are fundamental flaws in the way the CO–OP program was designed, making it unlikely that CO–OPs will ever achieve this goal. Failure of the CO–OP program could cost taxpayers as much as $2 billion. In addition, failure could expose hundreds of thousands of CO–OP enrollees to unpaid medical bills.

The argument that CO–OPs will succeed because they are non-profit ignores the fact that non-profit insurers are already widespread in the United States. In Senator Conrad's home State of North Dakota, WellMark BlueCross and BlueShield, a non-profit, controls 90 percent of the market. Massachusetts has the costliest health insurance market in the Country, despite the fact that the State's four largest health insurers are non-profit.

If the fact that CO–OPs are non-profit is not a genuine market advantage, what advantages do CO–OPs have? Under the ACA, CO–OPs cannot, at least in theory, be run by existing health insurance companies. As a result, CO–OPs will have to negotiate, from scratch, reimbursement contracts for every type of medical service with every hospital and doctor in their network. This is an extremely difficult and labor-intensive process. The likelihood that CO–OPs secure lower rates than established insurers is extremely low because as startups, CO–OPs lack the patient volume necessary to establish bargaining power with providers.

In addition, CO–OPs will lack the large data bases and management experience that established insurers use to identify opportunities for higher cost efficient utilization of medical services. Nonetheless, HHS claims that CO–OPs will be more efficient than existing insurers because "new entities are not saddled with existing administrative and information systems which are often outdated and cumbersome to coordinate and upgrade."

A Silicon Valley venture firm would laugh this argument out of the room. Even large, well-capitalized insurance companies rarely stray outside their established markets, because entering new States and regions is extremely difficult. If all it took to succeed were new computers, they would have done it by now.

Insurers are required to keep a certain amount of assets in reserve in case their spending on medical claims exceeds the amount they have received in premiums. However, Federal loans to CO–OPs are not assets, but liabilities, because they have to be repaid. As a result, HHS engaged in a kind of accounting legerdemain so that its CO–OP loans would count as assets. This means that HHS is helping CO–OPs overstate their true financial health. Even so, HHS estimated in 2011 that the CO–OP loan default rate would

be 40 percent. The Office of Management and Budget predicted an even higher default rate of 43 percent. And the Government has no effective way to recover funds from CO–OPs that default on their debt.

According to one estimate, at least 11 of the CO–OPs were licensed in such a way that if they go bankrupt, they may not be able to pay outstanding medical claims before first relieving creditors. This means that Americans who enrolled in CO–OP based insurance in good faith and paid their premiums on time may not find that coverage is there for them when they actually need it. This problem could further damage consumer confidence in the broader exchange-based insurance marketplace.

It should be noted that skepticism about the viability of CO–OPs is not limited to critics of the Affordable Care Act. Indeed, according to Jerry Markon of the Washington Post, "White House officials repeatedly suggested that funding for the CO–OPs be reduced. Some senior White House officials consider the CO–OPs risky, including for prospective policy holders, and question whether the loans would be repaid."

My recommendation to this committee would be to aggressively review the existing CO–OP loan recipients and at the very least, suspend the disbursement of loans to those CO–OPs with a below-average likelihood of future solvency. Stewards of taxpayer dollars should not throw good money after bad and place vulnerable Americans at risk.

The 2014 open enrollment period ends on March 31, giving CO–OP enrollees time to switch to a more financially stable insurer. With anything as complex as health reform, sweeping changes enacted by Congress are bound to have unanticipated consequences. In the case of CO–OPs, future insolvency is not unanticipated but assumed by experts in both parties. This should be an easy decision for both skeptics and supporters of the Affordable Care Act.

I look forward to your questions and to being of further assistance to this committee. Thank you.

[Prepared statement of Mr. Roy follows:]

Testimony Before a Joint Hearing of the House Committee on Oversight and Government Reform Subcommittee on Energy Policy, Health Care, and Entitlements; and the Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

February 5, 2014

Health Insurance CO-OPs: Examining Obamacare's $2 Billion Loan Gamble

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Oral Statement

Chairmen Lankford and Jordan, Ranking Members Speier and Cartwright, and members of the Oversight Committee: thanks for inviting me to speak with you today about the Affordable Care Act's CO-OP program.

As you know, CO-OPs were introduced as a substitute for the so-called "public option" by Sen. Kent Conrad. The idea was that CO-OP plans, shorn of the profit motive, would offer lower premiums than would traditional insurers.

However, I regret to report that there are fundamental flaws in the way the CO-OP program was designed, making it unlikely that CO-OPs will achieve this goal. Failure of the CO-OP program could cost taxpayers as much as 2 billion dollars. In addition, failure could expose hundreds of thousands of CO-OP enrollees to unpaid medical bills.

CO-OPs will have difficulty developing a competitive product

The argument that CO-OPs will succeed because they're non-profit ignores the fact that non-profit insurers are already widespread in the United States. In Senator Conrad's home state of North Dakota, Wellmark Blue Cross and Blue Shield—a non-profit—controls 90 percent of the market. Massachusetts has the costliest health insurance

market in the country, despite the fact that the state's four largest health insurers are non-profits.

If the fact that CO-OPs are non-profit is not a genuine market advantage, what advantages do CO-OPs have?

Under the ACA, CO-OPs cannot be run by existing health insurance companies. As a result, CO-OPs will have to negotiate, from scratch, reimbursement contracts for every type of medical service with every hospital and doctor in their network. This is an extremely difficult and labor-intensive process. The likelihood that CO-OPs secure lower rates than established insurers is extremely low, because, as startups, CO-OPs lack the patient volume necessary to establish bargaining power with providers.

In addition, CO-OPs will lack the large databases and management experience that established insurers use to identify opportunities for higher-quality, cost-efficient utilization of medical services.

Despite these serious competitive issues, HHS claims that CO-OPs will be more efficient than existing insurers because "new entities are not saddled with existing administrative and information systems, which are often outdated and cumbersome to coordinate and upgrade."

A Silicon Valley venture capital firm would laugh this argument out of the room. Even large, well-capitalized insurance companies rarely stray outside of their established regional markets, because entering new states is extremely difficult. If all it took to succeed were new computers, they would have done it by now.

Taxpayers could lose billions on CO-OPs

Insurers are required to keep a certain amount of assets in reserve, in case their spending on medical claims exceeds the amount they have received in premiums. However, it is a long-standing accounting convention that loans are considered

liabilities, not assets, because they have to be repaid. As a result, HHS engaged in a kind of accounting legerdemain so that loans to CO-OPs could be counted as "assets," even though they are actually liabilities. This means that HHS is helping CO-OPs overstate their true financial health.

For all that, HHS still estimated in 2011 that only "65 percent of the Solvency Loans and 60 percent of the Start-up Loans will be repaid," a default rate of 35 and 40 percent, respectively. The Office of Management and Budget projected even higher default rates of 37 and 44 percent, respectively. And the government has no effective way to recover funds from CO-OPs that default on their debt.

CO-OP enrollees are at risk if CO-OPs become insolvent

According to one estimate, at least 11 of the CO-OPs were licensed in such a way that if they go bankrupt, they may not be able to pay outstanding medical claims before first relieving creditors.

This means that Americans who enrolled in CO-OP-based insurance in good faith, and paid their premiums on time, may not find that coverage is there for them when they actually need it. This problem could further damage consumer confidence in the broader exchange-based insurance marketplace.

It should be noted that skepticism about the viability of CO-OPs is not limited to critics of the Affordable Care Act. Indeed, according to Jerry Markon of the *Washington Post*, "White House officials...repeatedly suggested that funding for the CO-OPs be reduced...Some senior White House officials considered the CO-OPs risky, including for prospective policyholders, and questioned whether the loans would be repaid."

My recommendation to this committee would be to aggressively review the existing CO-OP loan recipients, and, at the very least, suspend the disbursement of loans to those CO-OPs with a below-average likelihood of future solvency. Stewards of taxpayer dollars should not throw good money after bad, and place vulnerable Americans at risk. The

2014 open enrollment period ends on March 31, giving CO-OP enrollees time to switch to a more financially stable insurer.

With anything as complex as health reform, sweeping changes enacted by Congress are bound to have unanticipated consequences. In the case of CO-OPs, future insolvency is not unanticipated but *assumed*, by experts in both parties. This should be an easy decision for both skeptics and supporters of the Affordable Care Act.

I look forward to your questions, and to being of further assistance to this committee.

Mr. LANKFORD. Thank you, Mr. Roy. Dr. VanRiper?

STATEMENT OF JAN VanRIPER

Ms. VANRIPER. Thank you, Chairman Lankford and Chairman Jordan, members of the committee. Thank you for this opportunity to be here. Again, my name is Jan VanRiper, I am with the CO–OP trade association to which all 23 CO–OPs belong.

I am going to focus my remarks today on CO–OP viability, as I was asked to do. First, I think it is really critical to mention the importance of CO–OP financial viability and other types of viability to insurance costs for both consumers and for governments. As you know, a major reason CO–OPs were provided for was to inject some much-needed competition into markets that had been very stagnant for a very long period of time. The expectation, of course, was that with more competition in those markets, prices would be driven down, hence benefiting not only private payers but governments that subsidized some premiums for private payers.

In both cases, CO–OPs have already delivered on that expectation. A study conducted some months ago shows that in States where CO–OPs exist, overall premium prices are approximately 8 to 9 percent lower than in States without them. In a July health affairs blog, health policy experts extrapolated from pricing information provided by the CBO and the Urban Institute, concluding that if markets with CO–OPs have prices ranging from just 2 to 5 percent lower than otherwise, savings to taxpayers in lower Federal premium tax credits alone over the next 10 years would arrange from $6.9 billion to $17.4 billion. So it is maybe not an investment disaster.

Finally I would say to that, the financial viability of these CO–OPs is really in everyone's best interest. The CO–OPs take seriously their responsibility to make these CO–OPs viable.

As with any new business, it is important to look not only at immediate financial conditions, but most importantly to projections, realistic projections and expectations for long-term financial viability. As expected, and it is expected, that it would take some time for CO–OPs, as startup companies, like any startup company, to become totally self-sustaining. As an aside, I want to mention that in spite of this expectation, it turns out that a number of the CO–OPs are already doing very, very well on enrollment and garnering significant market share in their markets and in their States.

Going back to looking to the long-term projections for long-term CO–OP viability. The outlook really is excellent, and it is because of the tremendous and dedicated expertise in CO–OP management, demonstrated support from communities in the States where CO–OPs operate, early enrollment successes that point to this, and the facts that the CO–OP boards will soon be populated by consumers for whom they provide coverage, all pointing to long-term financial success and commitment on the part of the CO–OPs.

As with any business, however, it will take some time to reach the maximum positive capacity. In the meantime, the numbers show that CO–OPs have already gone a long way toward paying for loan costs by driving down prices in markets where they operate.

Having said that, I do want to mention some of the specific factors impacting current CO–OP enrollment numbers, because of

course, enrollment numbers, along with and other things, are something that very much drive financial success. At this early stage, as I said earlier, some of the CO–OPs are doing very, very well with enrollments. And I will tell you honestly that other CO–OPs are struggling out of the chute with enrollments. There are a number of reasons for it. One is pricing, another one is unanticipated market changes, and the third, at least the third is the number of competitive carriers in any given State in which there is a CO–OP.

I will just very, very quickly highlight those. With pricing, for new entrants, as was mentioned before, new entrants have to operate somewhat blindly, as did all the traditional carriers who operated on the exchange, somewhat blindly with respect to pricing. So it will take, since some CO–OPs came in maybe a little bit more, some cane in a little bit low, we have a good cross-section of CO–OPs that came in with excellent lower prices. But it will take a period of time, maybe a year, maybe two, for the pricing to get just right. That is probably true for all insurance carriers.

The unanticipated market changes that CO–OPs have been challenged with are again some of those faced by other carriers, but some are unique to the CO–OPs. I see that I am out of time.

Mr. LANKFORD. You can go ahead and finish. You have just two points.

Ms. VANRIPER. Thank you. Well, the first one obviously are the problems with the exchanges, both the Federal and State exchanges. They got off to a slow start, the Federal exchanges are working better now. There are still a couple of States who have non-functional exchanges. So that of course makes it difficult.

Another couple, and then I will finish, another couple unexpected changes was both the allowance for traditional carriers to do early enrollment and then the Administration's allowance for carriers to offer non-compliant plans, effective January 1st, because of the cancellation issue. Both of those things operate to reduce the number of potential enrollees in the exchange pools. So that obviously operates to a disadvantage of any new entrants versus those in the traditional carriers. I am saying this not with respect to whining about it on behalf of CO–OPs, it is just something that was unanticipated and it will take some time for them to react to that and regroup.

Thank you.

[Prepared statement of Ms. VanRiper follows:]

Before the Committee on Oversight and Government Reform Subcommittee on Energy Policy, Health Care and Entitlements and the Subcommittee on Economic Growth, Job Creation and Regulation

February 5, 2014

Testimony Submitted by the National Alliance of State Health CO-OPs [NASHCO]

This testimony is submitted by the National Alliance of State Health CO-OPs [NASHCO] in response to the Committees' request. NASHCO is the trade association for the CO-OPs, with all 23 CO-OPs as members and serving on the Board of Directors.

We understand your request that testimony be focused on the financial viability of these new entrants into the market and on the process used in awarding these loans, and we tailor this testimony accordingly. We are able to tell you more about the former than the latter, as the process internal to CMS to award these loans is not completely transparent to the CO-OPs. Another caveat to the information provided herein is that NASHCO has not gathered current enrollment data for all CO-OPs due to the changing nature of the data as days go by, although some CO-OPs have shared their enrollment information to date. We understand that enrollment figures will be available from HHS shortly, however.

CMS PROCESS USED IN AWARDING LOANS and GENERAL FINANCIAL VIABILITY REMARKS

CO-OPs were all required to submit applications to CMS including business plans detailing their capacity for likely financial success. We do not know how many applications for CO-OP loans were denied, but we know there were several. Those approved met CMS' strict scrutiny for financial viability. As you know, since loan approval some of the assumptions about the Exchanges and nature of the likely number of consumers who would by products through Exchanges have changed. In spite of this, many CO-OPs are already seeing high enrollment figures and market shares of business. [1]

Other CO-OPs are more challenged by unanticipated changes. Also, all CO-OPs operate in local markets – your constituent markets - where conditions vary. Below we provide some discussion of some factors impacting short and long-term CO-OP financial viability and their impact on health insurance markets around the country.

It is important to put the financial viability of CO-OPs as new entrants in context. As you know, the CO-OP program was put into place for at least two primary purposes. First was to inject much needed

[1] For example, information provided to us by some CO-OPs show the following current enrollments:
Maine: 18,374; percentage of target market – 80%; projected forecast of original enrollment goals for 2014 – 119%
Wisconsin: 11,500; 110% goal for year one; 20 – 25% total enrollment in QHPs
Iowa/Nebraska: 43,465, exceeding original enrollment projections by a factor of 4
Montana: 7029 total; on enrollment target with 38% market share

competition into stagnant health insurance markets around the country. The expectation was that more competition would drive health insurance premiums down, hence benefiting not only private consumers but governments that subsidize portions of consumer premiums, for example (but not limited to) the federal subsidy program offered through the current Exchanges. In both cases CO-OPs have already delivered on that expectation. A study conducted some months ago shows that in states where CO-OPs exist, overall premium prices are approximately 8 to 9% lower than in states without them. Moreover, in a July Health Affairs blog, health policy experts extrapolated from pricing information provided by the Congressional Budget Office and Urban Institute, concluding that if markets with CO-OPs had prices ranging from just 2 to 5 percent lower than otherwise , savings to taxpayers in lower federal premium tax credits over the next 10 years would range from $6.9 billion to $17.4 billion.[2] A report in November by the consulting firm McKinsey and Company found 37% of the lowest-priced plans in states with CO-OPS in their exchanges were offered by CO-OPS. So the financial viability of CO-OPs is in everyone's best interests, and the CO-OPs take seriously their responsibility to be financially viable.

The second goal for the CO-OP program was to provide consumers with a private, local insurance option, and one which was focused on being consumer-driven and leading in innovations that will drive lower medical costs, higher quality and payment reform. As such, CO-OPs around the country are seeing enrollment from consumers who are hungry for such an option, a factor which ultimately should drive very positive CO-OP enrollments and hence viability.

SOME PARTICULAR FACTORS IMPACTING CO-OP FINANCIAL VIABILITY

CO-OP financial viability in the long term will be substantially a function of the CO-OPS pricing right, attracting appropriate enrollment, providing consumer-driven products, and managing well. CO-OPs are well-situated to perform in a superior manner in all these areas. The combination of tremendous and dedicated expertise in CO-OP management, demonstrated support from their communities, and the fact that their Boards must soon be populated by the consumers for whom they provide coverage, all point to financial success. As with any business, however, it will take time to reach maximum positive capacity. There is no reason to worry that CO-OPs will not be paying back their federal government loans on time. Should it appear to their lender (CMS) or their state insurance regulators that they are floundering, either or both entities will intervene well before loan funds are substantially expended. In the meantime, the numbers show that CO-OPs have already gone a long way toward paying for loan costs by driving down prices in markets with CO-OPs.

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[2] To illustrate, this is a report from the Iowa/Nebraska CO-OP:
"A local insurance carrier, approved for a 13% rate increase for individual plans in early 2013, cancelled this increase when CoOportunity Health announced its filing for Exchange status and an offering of a full suite of products in the Iowa-Nebraska market. This cancellation, the first ever after a series of consecutive rate increases exceeding 10% annually, affected over 150,000 individual consumers. As a result of CoOportunity Health's competition in local markets, these 150,000 customers will save over $200 million in 2014 alone. Other health insurance customers are also expected to benefit from lower premiums thanks to increased competition. The Federal and State governments will benefit from reduced tax credit and cost share subsidies as well as lower premium costs for Medicaid expansion."

Having said that, some of the specific factors impacting CO-OP enrollment at this very early stage include: (1) pricing; (2) unanticipated market changes; and, (3) numbers of competitive carriers in states. In states where the circumstances around these and other factors are causing lower enrollments, there is every reason to believe that CO-OPs will adjust to these circumstances and challenges. Below is some detailed discussion of some of those factors.

Pricing:
As you know, health insurance markets around the country vary. Applicants for CO-OP loans were required to tailor their applications to local market conditions which entailed conducting market surveys. All, of course, made use of actuarial expertise in setting their plan prices for products to sell on and off the Exchanges. In most cases, pricing was done "in the dark," in other words without the benefit of having any knowledge, or necessarily history, of what competitors might charge. In only a small handful of cases state insurance regulators made initial pricing by the carriers available, and gave insurers an opportunity to reset prices.

As expected, most CO-OPs came in at the lower ends of the price point for plans on the Exchanges. Also as expected, some were higher. Although consumers make health insurance decisions on a number of factors, there is no question that for many price is key. Consequently, we understand that in some CO-OPs that were priced somewhat higher, their enrollment figures may initially reflect that preference. As with other factors at work in enrollment success, it will take time to achieve truly informed and appropriate pricing. As noted earlier, it is critical to consumer choice and lowering overall premium prices that CO-OPs be given an opportunity to reach appropriate pricing based on informed assumptions.

Unanticipated Market Changes:
When CO-OPs first developed their business plans, their enrollment projections and other plans were predicated on certain assumptions about enrollment on the Exchanges, some of which have changed since then. Many have had to revise those plans in recent weeks. Foremost among those unanticipated developments was the very rocky start of the Exchanges, both federal and some state Exchanges. Other unanticipated developments that affect CO-OPs' original enrollment expectations include allowing large established health insurers to "early enroll" consumers who originally expected to be shopping on the Exchanges, and the later "fix" in which established carriers were encouraged and allowed the opportunity to keep consumers on non-ACA-compliant insurance plans after January 1. Both developments reduced the number of potential enrollees coming through the Exchanges. Although some CO-OPs have already been able to drive high enrollment numbers due to unique conditions in their states, others have had a more difficult time. Most CO-OPs have had to revise their original plans in response to these changes, and in all cases arrangements have been made to adjust to these challenges. (Notably, CO-OPs are not allowed to use federal loan dollars to market, so marketing campaigns to adjust to the changes are challenging.)

Variations in numbers of competing carriers in CO-OP states:

It appears, based on anecdotal and some numerical evidence, that CO-OPs operating in states where there was just one, or perhaps two, previous dominant carriers, initial CO-OP enrollment is high. This is not universally true, however, as several CO-OPs in other states have higher initial enrollment figures. Once CMS releases enrollment figures we will be able know for certain. From comments made to CO-OPs in these states, consumers relish the new choice.[3] Indeed in some areas there would be literally no health insurance option on the Exchange without the CO-OP.

[3] From a CO-OP Consumer in Maine: "I just put my premium in the mail to MCHO, and I can't thank you enough for going out on a limb the way you have to make this available for Maine. I love the way you have designed the plans, given your financial constraints, to make mental health services accessible and to help people with chronic illnesses. I promise to try to stay healthy and keep my costs low! And for good measure I enrolled my 23 year old healthy daughter.
Truly, my daughter and I would both be in trouble if this option were not available. My job at ---------- is wrapping up, and I am taking the opportunity to start my own ---------- business. Looking at [the other companies'] plans, I can see I could never have done this without MCHO."

Mr. LANKFORD. Thank you.

I now recognize myself for the first round of questioning. Thanks for being here.

In some ways, this is a very difficult thing, because we have tried to ask a lot of questions. Ms. Horowitz, you mentioned you have been very transparent, and you have. Your group has been very transparent, you have come to interviews and we thank you for that.

But when we go to CMS and HHS and ask questions on enrollment numbers and all those things, it seems to be somewhat of a black box for us. So part of our conversation today is to be able to determine how is this going, where are we, and what is the expectation.

Dr. VanRiper, tell us about enrollment numbers. You mentioned some are doing well, some are not doing well. Let's talk about just targets. Each of them set a target amount. How are they doing reaching their targets?

Ms. VANRIPER. I would love to tell you what every CO–OP is doing. Unfortunately, I don' have all the information.

Mr. LANKFORD. For those that you have.

Ms. VANRIPER. What I have, and I put some of what I have in the written testimony. For example, in Maine, we have, as of yesterday I believe, they had 18,374 enrollees.

Mr. LANKFORD. What was their target?

Ms. VANRIPER. At percentage of target market, it is 80 percent. Projected forecast of original enrolment goals for 2014 at 119 percent.

Mr. LANKFORD. Okay.

Ms. VANRIPER. Wisconsin, they are at 11,500, they are at 110 percent of their goal for year one. They have approximately 25 percent of the total enrollment in the QHPs in Wisconsin. Iowa and Nebraska, 43,465 enrollees, exceeding their original enrollment projections by a factor of four. Montana has 7,029 total enrollees, on enrollment target with 38 percent of market share. Those are the only numbers I have. I wish I had more.

But I do know, just because I want to be totally honest here, I do know that there are other CO–OPs who are struggling with their enrollments for a variety of factors.

Mr. LANKFORD. But you don't know of any right now that are not meeting target goals? All those that you are listing are meeting or exceeding their target goals. You don't have any of them at this point that are not? You just know there are some?

Ms. VANRIPER. Yes, I can't name any. I know that there are some who are having to revise their business plans in light of some of the market conditions and other things. For example, Oregon and Maryland don't have functioning exchanges, so that is a bit of a difficulty.

Mr. LANKFORD. Dr. Stark, you mentioned there are 10 that you have already seen based on your own research, that are having significant problems. Is that correct?

Dr. STARK. Yes, that is the number that is in the literature right now. That includes the one that lost their credentials.

Mr. LANKFORD. Obviously the one from Vermont that was not able to get State licensure.

I do have a question. Ms. Horowitz, in context, and then we will have some other conversations, why choose CO–OPs? Freelancers Union has a for-profit insurance company that you are obviously connected to in a subsidiary of the company, and you have this interoperability and relationship there. Why also start the three CO–OPs? What was the benefit that you said, we have this but this won't work for these three different areas, we think a CO–OP would work? Why?

Ms. HOROWITZ. If I could just start by saying that Freelancers Union is not a CO–OP. We are a sponsor. And it was because the first part wasn't because there was any failure in terms of FIC, but actually, as I said in my opening statement, really the need for service and seeing that 42 million Americans don't have health care.

Mr. LANKFORD. The FIC model would not work in those three areas that you are extending into? My question is, you already have the Freelancers Insurance Company, which is a for-profit entity. Why would that not work? And you said to meet the needs of these individuals, we need to start these three CO–OPs, or sponsor them?

Ms. HOROWITZ. I wouldn't say that it is because we had a perception that something wouldn't work. Actually it was the opposite. We are social entrepreneurs. Social entrepreneurship is about figuring out market models and something that can go to scale or can be applied. So in each case what we saw was that FIC was a non-profit insurance company that was doing very well in terms of meeting its mission. And when the ACA came forward, it was clear that there was going to be a lot of change in the health insurance world. We wanted to see if there was a role that we could play, specifically because we understood, in the CO–OP legislation, that they were starting non-profit CO–OPs, and we had started one.

And as we have heard today, the issue is starting from the ground up. Having been a CEO doing insurance for 15 years, I can tell you, starting an insurance company from the ground up is hard. What we have been able to do is to really take the learnings and the experts and other things so that we could sponsor three CO–OPs, get them to be independent entities, and that is what we have done.

Mr. LANKFORD. I am still a little confused, though, on just why FIC couldn't have worked to be able to meet that same need, other than just you saw this possibility in the ACA and said, let's try it. That is a lot of work to get something started rather than expand what is existing. Why not take what was already existing and expand into new areas, rather than try and create something new, all the work?

Ms. HOROWITZ. Okay, well, FIC is licensed in New York. It is a New York insurance

Mr. LANKFORD. One of your CO–OPs is in New York as well, isn't it? Or is it?

Ms. HOROWITZ. Yes, and it is not our CO–OP. They are independent, that we have sponsored, is in New York, yes. So what we were looking for was to have a broad range of options. Because independent workers weren't able to get large employer coverage. So typically, they were the ones who were having the hardest time

buying health insurance. So here, the CO–OPs were coming out with an ability to have a potential national reach. We saw that we had this model, and we wanted to make sure that we could show how you could do it. That is because that is part of our mission, it is core to our mission, and we saw there was a big problem. We thought this was an effective way, and we still do.

Mr. LANKFORD. Okay, thank you. I recognize Mr. DeSantis for a line of questioning.

Mr. DESANTIS. Thank you, Mr. Chairman. And to both the chairmen, thank you for having this hearing. I think it is very important. It is such a huge law, there is so much money thrown around. We are the only line of defense for the American taxpayer to keep track of this.

It is interesting, there was this report by the Congressional Budget Office, and people in Washington get excited about a lot of this stuff sometimes. And it was very negative about this law generally. And people say it is in an indictment of the law, and I think it is. But it is also an indictment of what CBO has previously done, because if you look at when this law was being debated, we were told that it would cost $850 billion over 10 years, most of the Democrats said it would cover everybody, it would reduce the deficit.

Now we know, and I know that there was some fraud in that because they jiggered the spending versus the taxes to make it appear like it would reduce the deficit, but now the 10-year forecast, not $848 billion but $2.004 trillion dollars over 10 years. And the kicker for me is, 10 years from now, their estimate, and I think this is probably a floor, not a ceiling, 31 million people, no health insurance at all. And so sometimes it is viewed as an article of faith, even by journalists here, oh, well, at least Obamacare is covering everyone. It is just factually false.

So we are spending trillions of dollars to really make only a minor dent in the number of people who run insurance. In that sense, I think comparing those 2009 and 2010 reports to now, now you can't just put garbage in and get the result you want, because there are actually facts. So I think the CBO is forced to acknowledge some of that.

But I just wanted to point out, Mr. Roy, maybe you can speak to this. I know you have written about the report. But this notion of essentially creating a disincentive to work and that it is going to create less full-time employment, 2 million people by 2017, do you believe that Obamacare does create that disincentive? And what are your thoughts on what the CBO said in that respect?

Mr. ROY. The CBO was really reflecting a lot of the recent academic research in the field of how means-tested welfare programs affect incentives for people to remain in the workforce. But there are three major considerations as to why the ACA disincentivizes or reduces the size of the labor force. The first is the employer mandate. So by requiring a business of more than 50 workers to offer health coverage, it increases the cost of hiring a new worker. Because it increases the cost of hiring a new worker, a lot of employers will hire less people. So that is factor number one.

Factor number two is the $1 trillion in tax increases over the next 10 years the ACA imposes on the economy. And for a lot of

different reasons, just general economic growth, disincentive for people to work harder, et cetera, those tax hikes will reduce economic growth and therefore contract the labor market.

The third issue, which is the one that is getting the most attention, is the means-tested subsidies, the Medicaid expansion and the exchange subsidies that, because they can substitute for earned income through wages, will give some people the incentive to either withdraw from the workforce entirely or reduce the amount of hours they work, because they will be getting equivalent benefits.

Mr. DESANTIS. So that 2 million figure that CBO put out, that is really only dealing with number three, which you listed. They are not saying that because of the employer mandate it is going to cause that. So in other words, if I agree with you, and I do, that that employer mandate creates a disincentive for businesses that are small to expand, it creates an incentive to move people to part-time, 29 hours or less, to relieve themselves of the burdens of Obamacare. If that is the case, then 2 million is already in the bank because of the general incentives in terms of means-tested welfare. Then you have to add on top of that, correct, for the employer mandate, the first two points that you made would be in addition to that 2 million, correct?

Mr. ROY. I believe the number for, I think it was year 2023, was 2.5 million people less in the labor force. And that encompassed all three factors. And they didn't break out how much was each. But I believe the third factor was the largest component.

Mr. DESANTIS. Which I think will be interesting, because I think the CBO has traditionally underestimated the impact of this employer mandate. And we may very well see soon the incentives that creates. I have businesses in my district that say, look, it is cheaper for me to pay the penalty. Now, they can't always do that, because they do have some employees who would have other options who may be able to leave. But for a lot of the low skilled, the blue collar folks, they are going to be in a position where they are going to lose hours, they are going to be moved to potentially the Obamacare exchanges. I think that is going to create a huge upheaval.

So in terms of this deficit reduction, you had mentioned there is a trillion dollars in tax increases. I think the way they did it was, there was a trillion dollar in tax increases, $700 billion in Medicare cuts, therefore compared to $850 billion, that reduces the deficit. But now that it is $2 trillion in outlays, even though significant tax increases and Medicare cuts, that still doesn't get you to $2 trillion, does it?

Mr. ROY. This is a long subject we could spend all of your time discussing. But the CBO projections have a fair amount of uncertainty, and we can say that for sure. I think one thing that is important about this report that came out yesterday, the Budget and Economic Outlook Report, is that the CBO estimated, compared to its previous year estimates, that the deficit would be $1 trillion larger, due to $1.4 trillion less in tax revenue and $400 billion less in spending.

So the deficit outlook is worse than it was before, and that is largely due to lower economic growth, lower GDP growth which potentially is in part a result of the ACA and its tax increases.

Mr. DESANTIS. Absolutely. And I thank the chairmen. I would just note on top of that, it is my understanding that the CBO director today, when he was in front of the Budget Committee, said that they are forecasting less economic growth in large part because of these incentives. So this is not a law that is causing the economy to grow or put people back to work. It is actually hindering our recovery which has real effects for people in their individual lives trying to find work, but also in terms of our long-term fiscal outlook. If we are growing less, we are going to be taking in less revenue and all our problems become even more severe.

So I thank both of the chairmen for holding this hearing.

Mr. LANKFORD. Thank you.

Mr. Jordan?

Mr. JORDAN. Thank you, Mr. Chairman.

Ms. Horowitz, the chairman asked you a question about why you didn't just use the existing insurance company. You said to meet needs and do things, you set up the CO–OPs.

But when you set up the CO–OPs, you were able to access $240 million of taxpayer money in the form of a loan, isn't that true?

Ms. HOROWITZ. The $340 million did not go to the Freelancers Union.

Mr. JORDAN. I am not saying that. The question was, why didn't you just, to meet all the things you talked about in your opening statement, the chairman asked you why didn't you use the existing structure. And you said you set up the CO–OPs to deal with the concerns that you had to meet some need. But isn't it true when the CO–OPs were set up you were able to access taxpayer money?

Ms. HOROWITZ. So perhaps I am not understanding.

Mr. JORDAN. Let me just ask the question straightforward then. Did the Freelancers-sponsored CO–OPs receive Federal taxpayer funds?

Ms. HOROWITZ. The funds went to start the three CO–OPs.

Mr. JORDAN. Okay. So I will leave out the sponsored part. The CO–OPs got funds, right?

Ms. HOROWITZ. Yes.

Mr. JORDAN. And how much money did they get?

Ms. HOROWITZ. Three hundred and forty million.

Mr. JORDAN. Okay. And let's put up slide number one.

[Slide shown.]

Mr. JORDAN. I just want to be clear on what the law says. Any organization shall not be treated as a qualified non-profit health insurance issuer if the organization or related entity was a health insurance issuer on that date.

Was Freelancers Insurance Company a health insurer on July 16th, 2009?

Ms. HOROWITZ. Freelancers Insurance Company was. But

Mr. JORDAN. Okay, that is fine. So let's go to chart number two.

[Slide shown.]

Mr. JORDAN. This is information that you provided the committee staff that shows the structure of several organizations that you are part of. And IWS is the one in the middle, and IWS stands for what, Ms. Horowitz?

Ms. HOROWITZ. I am sorry?

Mr. JORDAN. You tell me. This is your chart.

Ms. HOROWITZ. I am sorry, are you asking me what does IWS stand for?

Mr. JORDAN. Yes.

Ms. HOROWITZ. Independent Worker Services.

Mr. JORDAN. Okay. And there we have Freelancers, the Union, and then we have the Freelancers Insurance Company as well. And then of course we have the CO–OPs over there, the New York, New Jersey and Oregon CO–OPs, is that correct?

Ms. HOROWITZ. If I may, sir, Congressman, the structure that I think is a little bit easier to understand is really that it is Freelancers Union which just says Freelancers. I don't know where this slide came from, because it might be kind of an older one.

Mr. JORDAN. It is your slide.

Ms. HOROWITZ. Yes, for sure. My fault, happy to say that here. Freelancers Union is the (c)(4) non-profit. IWS and FIC are kind of under that as the two for-profits. Some of these I don't really know where they come from, the self-organized work groups or the cooperative businesses.

Mr. JORDAN. Well, I don't either, because I didn't put the chart together, you did.

Ms. HOROWITZ. What I am saying is——

Mr. JORDAN. I am just pointing out the chart here.

So let me ask you this. Those CO–OPs which have a line connected to IWS, and then there is a line to Freelancers and a line to FIC, I just want to know, which of these organizations are you involved with? Are you the CEO of any of these organizations?

Ms. HOROWITZ. Yes.

Mr. JORDAN. Let's start with the circles. Are you the CEO of Freelancers?

Ms. HOROWITZ. The CEO of Freelancers Union, yes.

Mr. JORDAN. And are you the CEO of the circle marked FIC?

Ms. HOROWITZ. Yes, I am.

Mr. JORDAN. And are you the CEO of the organization in the middle?

Ms. HOROWITZ. Yes, I am.

Mr. JORDAN. So three of those six circles, you run the show?

Ms. HOROWITZ. Yes, I am the CEO.

Mr. JORDAN. Okay. So it seems to me the answer to Mr. Lankford's question was, the CO–OPs had to be formed so that you could send money to IWS to get money to the other two entities that you are the CEO of, isn't that correct?

Ms. HOROWITZ. No, it isn't correct.

Mr. JORDAN. Well, let me ask you this, then. You said the CO–OPs got taxpayer loan dollars, correct? The CO–OPs, they received money from the taxpayers, the $340 million.

Ms. HOROWITZ. The three were the recipient of the $340 million, yes.

Mr. JORDAN. How much of that $340 million went to the line that goes, see that line that you drew between the CO–OPs, that circle, lower right corner, and IWS, see that line? How much of that $340 million traveled across that line to that circle in the middle? Or I guess that is not a circle there, IWS in the middle.

Ms. HOROWITZ. I would love to be able to explain this. As Mr. Roy——

Mr. JORDAN. I didn't ask you to explain it. I asked you how much money went from that circle over on the right to that big bold IWS in the middle, which you are the CEO of?

Ms. HOROWITZ. So if I could try to, because I know that——

Mr. JORDAN. It is a simple question, Ms. Horowitz. I want to know how much money traveled from the CO–OPs to IWS.

Ms. HOROWITZ. And I really want to be able to explain it to you, but it is complicated, because there are a number of structures——

Mr. JORDAN. I will let you explain it once you give me a number.

Ms. HOROWITZ. I know that I can do it pretty easily.

Mr. JORDAN. You can?

Ms. HOROWITZ. Yes. May I?

Mr. JORDAN. The number is easy to get if you know the number. Do you know the number?

Ms. HOROWITZ. So the three CO–OPs——

Mr. JORDAN. Do you know the number? You don't have to give me the number. Do you know the number?

Ms. HOROWITZ. I do and I want to explain it. May I have a moment to explain it?

Mr. JORDAN. Explain it and then give me the number. Go ahead.

Ms. HOROWITZ. Okay, thank you very much. So Freelancers Union sponsored three CO–OPs, Oregon, New York and New Jersey, those got $340 million. IWS' job, as was put in our application to begin with, was to be able to help to launch them, setting up their IT systems, their backend operations, helping them select their vendors and for that, IWS was paid $25 million in the last two years to provide those. And that is how the three CO–OPs were able to launch on time and on budget. This is something that is done in the agricultural CO–OPs, they are called secondary CO–OPs, and that was the model that we used

Mr. JORDAN. You still didn't answer my question. How much money traveled from the circle on the right to the one in the middle? Did you say that?

Ms. HOROWITZ. I believe I did, sir.

Mr. JORDAN. And how much was that again, just for the record?

Ms. HOROWITZ. Twenty-five million.

Mr. JORDAN. Twenty-five million, of the $340 million?

Ms. HOROWITZ. Yes, and that was the work through sponsorship, which ended December of last year.

Mr. JORDAN. And was there ever any question raised about this arrangement, it is all new, did CMS ever say, hey, wait a minute, we are not sure this is kosher, we are not sure this is appropriate? Was that ever brought up?

Ms. HOROWITZ. Well, as Chairman Lankford thanked us for our transparency, you will see that throughout the process, that was indeed in our application, the first application for the CO–OP program that was discussed with Deloitte.

Mr. JORDAN. If the Chairman would indulge me here. Could we put up the next slide?

[Slide shown.]

Mr. JORDAN. So this is an email we got. Seems to me CMS had real concerns. We must insist that the CO–OP in Oregon provide the following assurances, bullet point number one, the Freelancers CO–OP in Oregon will make no more disbursements to IWS. So at

some point they said, hey, we have to stop this little game you have set up here. Is that correct? That is what it says.

Ms. HOROWITZ. I don't believe—so Congressman, when we were launching these three CO–OPs, we, our staff had regular meetings and eventually, very quickly after the awards, the CEOs, interim CEOs and management team of each of the CO–OPs met regularly with CMS, where contracts were reviewed. If there was something of concern that was raised at those meetings, this has all been a transparent process and this is a big project and there were questions that went back and forth.

Mr. JORDAN. All right. Let me put up slide number four.

[Slide shown.]

Mr. JORDAN. This is again from the same presentation that you all provided to someone and gave us, we got the copies from you. I want to look at the first bullet point. Support Freelancers goal—this is the vision and mission of this packet of information you put, when you were talking about this structure to access taxpayer dollars and set up these CO–OPs. Bullet point one says, support Freelancers Union's goals of power and markets and power in politics. Tell me about the power in politics, what that means.

Ms. HOROWITZ. It really derives from the power in markets, just to give you an example, I am pleased to say that we were the recipient of the Manhattan Institute award for social entrepreneurship in 2003 for our work on insurance using market practices.

Mr. JORDAN. That is fine in 2003. I am talking about now relative to the CO–OPs and this term power in politics. What does that mean?

Ms. HOROWITZ. So if I can give you an example. So for instance, in New York, we had a market insurance company so that we could demonstrate how you could bring people together in a new kind of insurance company. Because as others on the panel have mentioned, they were geared toward large employer, small employer. So we had a market kind of innovation that we said is going to be really important for the next workforce. We could show that in a market, and then we could go and say to our regulators or our elected officials, we need to evolve our policies so that we start meeting the needs of the next workforce.

That is what we always do. It is always in tandem, but we start with market strategies, because we are DIY.

Mr. JORDAN. You talked all about markets. I was asking about the power in politics. What does that term when you are talking about the IWS business development plan, which is what this all is? What does that mean, power in politics? I have my idea, because I am going to show the next email.

Ms. HOROWITZ. Okay, well, it is about evolving through demonstrations how we need to change our policies, our regulations, our laws, so that we evolve.

Mr. JORDAN. Okay, let me go to the next email, because this to me seems like what power in politics is. This is an email from you where you contact Liz Fowler. Now, Ms. Horowitz, who is Liz Fowler?

Ms. HOROWITZ. Liz Fowler worked in the Administration.

Mr. JORDAN. Do you know her title?

Ms. HOROWITZ. I do not.

Mr. JORDAN. Special Assistant to the President. Yes. Power in politics is when you can reference and talk to the Special Assistant to the President. And this email is to your government relations person, or who is this email to?

Ms. HOROWITZ. I believe—I am sorry, I can't see it from here.

Mr. JORDAN. Melanie Nathanson, does that name ring a bell?

Ms. HOROWITZ. Yes.

Mr. JORDAN. And who is that?

Ms. HOROWITZ. Melanie Nathanson is our lobbyist.

Mr. JORDAN. She is your lobbyist? And you think calls for an SOS to Liz Fowler and high level friends, that sounds like power in politics. You are telling your lobbyist, call the White House, CMS is saying this cozy arrangement we have where the CO–OPs get $340 million of taxpayer's money, send a bunch of it to IWS, which I am the CEO of, and then we can use that, because money is fungible, we can use that at Freelancers Union, which I am also the CEO of, and we can potentially use it at Freelancers Insurance Corporation, which I am also the CEO of, and we need to send an SOS to Liz Fowler, the White House Special Assistant to the President, and other high level friends. This is like sending up the flare, shooting up the fireworks, jumping up and down on the table. We got to make sure our little cozy arrangement here continues to stay in existence. That is what this is, particularly after CMS said, hey, wait a minute, stop the payments. Stop the payments. Tell me where I am wrong, Ms. Horowitz.

Ms. HOROWITZ. If I might have the opportunity, Congressman, Chairman, sorry. When we were awarded the $340 million——

Mr. JORDAN. You said earlier you weren't awarded the $340 million. You said the CO–OPs were.

Ms. HOROWITZ. As a sponsor.

Mr. JORDAN. But you just said "we." You just made my point, Ms. Horowitz. All along you said the CO–OPs got the money and then IWS got a little bit. Now you just said "we" got $340 million.

Ms. HOROWITZ. Chairman, Freelancers Union has a track record of being very careful stewards of money. When we launched and were awarded, we had a track record of starting an insurance company from the ground up. Soon after that, there were issues with HHS that we found where HHS had their ideas about how to successfully launch, because we were dogged about spending taxpayer money, investor money, philanthropic money very carefully. We were able to do that. So if I can respond, because you have asked me a question.

Mr. JORDAN. I am way over time and the chairman has been very indulgent. We may have a second round.

Mr. LANKFORD. I would be glad for you to be able to respond as well.

Mr. JORDAN. I am going to say one last thing, Mr. Chairman, then I will yield back and if she wants to respond.

Mr. LANKFORD. She will have time to respond.

Mr. JORDAN. I will look forward to hearing it.

In your opening statement, you said our model is DIY. You said that in your opening statement?

Ms. HOROWITZ. Yes, I did.

Mr. JORDAN. Our model is DIY, do it yourself.

Ms. HOROWITZ. Yes.

Mr. JORDAN. And yet, you didn't do it yourself, you got $340 million of taxpayer money, you set up this cozy structure where IWS is in the middle of it all and you are the CEO of three of the organizations leveraging that $340 million and getting a bunch of that money. So I don't know, our model is DIY? Since when does DIY mean I need $340 million of taxpayer money? That is our big concern here, Ms. Horowitz. And it wasn't just our concern. It was the concern of the people at CMS. And you used the political, what was it called now, you called it the power in politics, to make sure it got to continue. And that is the concern with this entire arrangement. I yield back.

Mr. LANKFORD. You do have time to respond to that, Ms. Horowitz.

Ms. HOROWITZ. Thank you very much.

So I was very concerned that these CO–OPs would launch on time and on budget. That was what I was thinking about. That is my job, to use taxpayer money, any money, financial money, investor's money, members' money. And so when they were issues, I was not going to let that get derailed. And when I was having a difficult time, when our staff was meeting with CMS regularly, we were regularly having difficulty with some of the decisions, we said, we need to do whatever it takes.

So we then went to the Administration to say, we need you to help iron this out. There is a reason that we launched on time and on budget. When we see the other problems with exchanges, those were problems. We launched on time and on budget.

Mr. LANKFORD. Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman.

Dr. Stark, I want to come back to your testimony. I think you said that there's potentially 10 other CO–OPs that are financially in difficult situations, is that correct?

Dr. STARK. Yes, that is correct.

Mr. MEADOWS. So by being in financially difficult situations, what are we looking at in terms of trying to make them potentially solvent? What is the exposure to the American taxpayer, if we chose to bail them out?

Dr. STARK. I don't know specifically the 10 CO–OPs. As I say, those are the numbers that are in the literature right now. My big concern is that 10 out of the 23 and then potentially all 23 will go into financial failure, or financial problems. And that entire $2 billion will be at risk. Either that, or as I testified before, either the $2 billion is at risk or the CO–OPs will come back to the American taxpayers, back to Congress and say, we need more money to stay viable.

Mr. MEADOWS. So let's say they were to come back to us for additional money. That is not typically the model of a CO–OP. You were very kind in giving us the history of CO–OPs in a number of other areas, and I am very familiar, I am probably the only Member here who has actually been involved in a health care CO–OP. So as we look at this, if we look at the history of CO–OPs, it is member-driven, it is member-owned, and it is not government owned. Although there have been components, I was in the electric

utility business, there have been components of financial interest with a Federal role.

However, what I am hearing today is that we are taking a model that is directly competing with the insurance model and we are saying, what we are going to do is create a kinder, gentler and member-owned health care insurance provider, but we really want the Federal Government to play the backbone role of that. Is that correct?

Mr. STARK. Yes, they are the backstop, that is correct.

Mr. MEADOWS. So if we are doing that, so let me go over to you, Dr. VanRiper, because you talked about competition. Indeed, what we have done is we have created a Federal loan to a CO–OP to compete with private businesses. Is that correct?

Ms. VANRIPER. Yes.

Mr. MEADOWS. All right. So why would the Federal Government, now that we have the Affordable Care Act and it is the law of the land, where access to health care is guaranteed, my Democrat colleagues would say that it is guaranteed, why would we need the private, Federal Government to come in and create new insurance companies for greater competition? Because I know in your testimony you said it drove prices down.

But I would go back to Dr. Stark, if we have a company that is not financially viable, driving the cost down, we are creating a false market anyway, because it is, we can't make up this in volume. So what is the rationale behind it?

Ms. VANRIPER. Two points, I think, if I may. Thank you for the question. First of all, with respect to the Government-backed loans provided to carriers who are competing with the already-existing private carriers, as I mentioned before, the market has been very stagnant. We have several States where there is one dominant carrier; some States the dominant carrier has 90 percent of the market.

Mr. MEADOWS. But that is how most of these CO–OPs are, I mean, you are looking at New York, so you are saying you have one health care provider.

Ms. VANRIPER. I am sorry, I didn't mean to say health care provider. I meant other insurance companies.

Mr. MEADOWS. So you have one insurance company in New York?

Ms. VANRIPER. No, I did not say New York. I said in many States one dominant carrier.

Mr. MEADOWS. Well, that is where this CO–OP was, I think New Jersey, Oregon and New York.

Ms. VANRIPER. Okay, then I don't understand the question.

Mr. MEADOWS. I guess my question is, so you are saying that the only time that a CO–OP is really viable is if you only have one insurance company in a State?

Ms. VANRIPER. No, I did not say that, and I took the question initially to be, what is the point of having Government-backed loans to compete with a private carrier.

Mr. MEADOWS. Well, the question was, why should the Federal Government be backing competition when there already is competition?

Ms. VANRIPER. Because again, in some States there is really no competition. Throughout the Country, the insurance markets have been completely stagnant for about 30 years. I put in a call not too long ago to NAIC to try to find out what kind of new entrants there have been in the insurance industry over the last several years. Basically I was told they couldn't find any record but for maybe six in the last several years. So again, I think the thought was, and it may have proved to be a good idea, that if you loaned money to some startup companies, because it is difficult to start an insurance company, obviously, that it would inject that competition in the markets and lower the price. And indeed, if the figures we are looking at, if they are appropriate, it seems to have been working.

Mr. MEADOWS. Well, it is lowering costs, but according to Dr. Stark, if they are not financially viable, I can sell watermelons for a dollar every day and buy them at $1.10. I can't make it up in volume and make a profit. And so if indeed it is driving down the cost and it is not a financially viable market, how does that help us in the end?

Ms. VANRIPER. Totally a very good point, and if I may, that is right, if you have insurance companies coming in and doing predatory pricing or for whatever reason, and the pricing is not helping anybody. Certainly if carriers do that, it is not good for anybody. But what I would really like to talk about here real quickly is the kind of risk that the government faces with these CO–OP loans. Just from a logical perspective, it isn't nearly as much as has been described, which is a different issue than pricing too low.

But I think it went to your additional question, and that is this. These loans are, in most cases, the ratio of the startup loans to the solvency loans is very low. So you might have a 10 percent startup loan to 90 percent solvency loan. The startup loans are largely expended by the CO–OPs. There are some that haven't spent all those monies yet. But those will have been spent.

And then the solvency loans are there for the, they are never intended to ever be spent.

Mr. MEADOWS. Well, then let's don't give them. Why do you have them? I mean, because what I have found in a very short period of time is that what we intend not to happen always happens. If there are monies that are there, they always get tapped. And what I can tell you, I was a small business guy. So when I look at making things work, going to the federal Government to make sure that I am solvent was never an option. It was not an option. I had to make it on my own.

And what I am concerned about is, I hear today, in in very mature insurance markets we are now looking at a CO–OP model to compete directly with other insurance companies. It is one thing if they only have one carrier. So maybe there is a model, as there was in the electric utility business in very rural areas. But even now, that particular model has outlived its usefulness, just because so much of that is member-driven, and they do a fine job, and they compete with investor-owned utilities.

So it sounds like in a very mature insurance market, we are allowing the Federal Government to get in there at the risk of insolvency. You would not agree with that?

Ms. VANRIPER. I would not agree at the risk of insolvency to anywhere near the level that has been discussed today. I mean, certainly there is a chance, and we have already seen it in one CO–OP for particular reasons. There is a chance that some of these CO–OPs won't make it, obviously. They are startups, they won't necessarily all make it.

But let's just say a couple of them go down. As I was trying to explain before, if they do, if they do, what the government will be out, they will be out the startup loans and whatever possibly none of the solvency loans. And why, if they are not going to draw down those solvency loans, why are they necessary? It is because of State insurance regulation requirements. You can't come in and be an insurance company without some pretty massive reserves or funding available to cover losses in the event you can't pay your claims.

In CO–OPs' case, they are required to do what is called 500 percent of RBC, so because they are new entrants, they are required by all of these States to keep reserves, even in excess of what the carriers are. So there is a lot of protection there for consumers, and again——

Mr. MEADOWS. I am out of time. The Chairman has been very gracious in allowing me to go over. I know Mr. Roy wants to comment, but I will yield back. Thank you, Mr. Chairman, for your graciousness.

Mr. LANKFORD. Thank you. Mr. Roy, if you had a comment, you can certainly give that.

Mr. ROY. Yes. I think that Mr. Meadows has raised an important question, which is why is it that many of the CO–OPs are located in States that already have relatively competitive individual and small business insurance markets. The States that have less competitive insurance markets, where the CO–OPs are most needed, are not the States, generally speaking, where the CO–OPs are participating. Therefore, in that central way, they are not achieving their goal.

This gets to the point that Dr. VanRiper mentioned in her opening statement, which is she said that there was a study that showed, in States where CO–OPs are participating, average premiums were lower than in States where CO–OPs weren't participating. Well, that is not because of CO–OPs. That is because those markets were already competitive, and because they were already competitive, average premiums were lower. CO–OPs have no causality relationship with those results.

Mr. LANKFORD. Right, it is too early on that. Dr. VanRiper, it looks like you want to respond to that, then I have several questions with that as well.

Ms. VANRIPER. Thank you. I mean, that is simply at odds with what the evidence shows. It shows that in States where there are CO–OPs, this isn't operating on the exchanges, it is 8 to 9 percent lower premiums across the board.

Mr. LANKFORD. But you are saying it is cheaper last year, when the CO–OPs were new, or cheaper this year? Because you were saying several months ago when it came out. When you quoted that earlier, I thought, how did the CO–OPs reduce prices last year or for this year when they are just trying to get online right now.

Ms. VANRIPER. Right, and isn't that a good question. I think it is based on historical data, yes.

Mr. LANKFORD. But we don't have any current data on it? It is just an assumption that CO–OPs are in these States, prices are going down. But trying to develop the causality, we don't know yet?

Ms. VANRIPER. We don't know, but I mean, just like with all kinds of other projections, it is based on historical information and projections by experts.

Mr. LANKFORD. Mr. Roy?

Mr. ROY. I just want to add one thing, which is, actually, it is not true that premiums are going down in the States with CO–OPs. Average premiums on the individual non-group market are going up by an average of 41 percent, according to a Manhattan Institute study, across the Country. Only a small handful of States are seeing decrease, and that has to do with prior regulatory schemes. Generally speaking, premium rates are not going down. Relatively speaking, on the exchanges, some States have higher premiums, some States have lower premiums. That is what this study is addressing. It is not addressing rates in the 2014 market relative to the 2013 market. In the vast majority of States, I believe 42 or 43, premiums are going up, in many cases dramatically.

Mr. LANKFORD. Right. Dr. VanRiper, you made a statement, you listed off three things that were basically problems for some of these CO–OPs getting off the ground. Pricing, obviously, market changes, which is basically regulatory changes on the whole at CMS and HHS, changing the rules at whim, and the CO–OPs trying to catch up to that often. And the third thing was competitive carriers. I found that very interesting, because obviously this was designed in the law to be able to create an entity. But you are saying one of the problems is, they are trying to start up in places where there is a lot of competition already and that makes it very difficult.

Ms. VANRIPER. I think that is right.

Mr. LANKFORD. How many States are they starting up where there is low competition? You are saying that is a problem for the 23 that exist, that a lot of them are trying to start in places where there is already high competition. How many of them are starting in low competition areas?

Ms. VANRIPER. I am sorry, I can't give you that off the top of my head. I can find out.

Mr. LANKFORD. That is what we would like to find out, because obviously that was the original purpose. And I want to be able to express this to everyone in this, a lot of what you are going to hear from this panel and our conversation is not anything personal with your entities and organizations. It is with the law that was written that people are trying to figure out, and the rules are changing on consistently. Ms. Horowitz, for instance, the statute is pretty clear when it says entities may not receive direct loans through the CO–OP program if the organization or related entity was a health insurance issuer prior to July 16th, 2009.

So our concern is, you are right, you are very well suited to start up CO–OPs because you have had these related entities, you are a CEO of one of those groups, you are helping start CO–OPs. There is no question in the plain reading of the law that your organiza-

tion should not have these funds. But you are actually better qualified to do it because you have done it in the past.

So the issue is not necessarily with you personally starting this up, the issue is, it is not the plain reading of the law. So all these gymnastics with CMS to try to work through, to try to create this new term sponsorship, is to allow a group that is probably qualified to do it to actually do it when the law says, no, you really can't do that. This is the nature of this law that they seem to shift and change at whim and this Administration seems to have problems with the way the law is written. So they will just, by regulation, change it. And then everybody is trying to figure out how to be able to process through it.

Do you want to comment on that?

Ms. HOROWITZ. If I may. Yes, perhaps I can help clarify a bit. Because really, the law itself did not mention sponsorship. That really was left to, it is the overarching framework, obviously.

Mr. LANKFORD. Where did that term sponsorship come from, and how long did it take to be able to create that term? Because that wasn't the original term that was affiliated.

Ms. HOROWITZ. Right. And I am not sure I know, actually. But I know that when the law, the overarching framework went to HHS so that we could granularly understand what would that be, that is when there was the opportunity to talk about what would be the roles, what would be the role of a sponsor. Perhaps because we could see what we were able to do with FIC, we were able to talk about, at that phase, how we thought that we could play a role. I do not know the intricacies of what happened with HHS, and I am sorry that I can't shed light on it.

Mr. LANKFORD. It just begs the question, when you are getting off the ground, you are getting everything organized, it is obvious you had some pushback from CMS, as Mr. Jordan actually put up the information, CMS started asking questions, saying, hey, this seems very connected as far as an organization, with the startup funds. It seems to all run through one for-profit organization. So there was some pushback on that. Obviously there was some pushback for you related to this as well, to say hey, I am not sure you qualify for this because of this. You had conversations and your people had conversations to try to provide some clarity, is that correct?

Ms. HOROWITZ. I would say that is a complex bunch of activities, if I can just parse this out a little bit. One was the issue initially which was, what kind of role can Freelancers Union play, how can it be a sponsor. And HHS made it crystal clear that we could. That was one set.

Mr. LANKFORD. When was that determined?

Ms. HOROWITZ. It would be during the rulemaking. I am not a Washington, D.C. person, so I never really know, like this is rulemaking, this is this, this is the White House.

Mr. LANKFORD. Give me a time period. That was 2012, 2011, 2010?

Ms. HOROWITZ. The applications were due, I believe, in the end of 2011. And so in the beginning of 2012 we were awarded, I believe it was February of 2012.

Mr. LANKFORD. Was there at any point a conversation to say, I am not sure you meet the criteria because you have a related insurance company? Did that ever come back to you at all?

Ms. HOROWITZ. When we looked at the law itself that had just been passed, it was clear to us that we could not be, Freelancers Union could not be a CO–OP. So then we were saying, okay, if we can't be a CO–OP, then are there any other ways that we can participate. So again, I don't know where the idea of sponsorship came, but that is the role that we could play.

Mr. LANKFORD. Did you have ongoing conversations with anyone in the White House or HHS or CMS about, how could we participate, can we work out some way to be able to have this relationship?

Ms. HOROWITZ. I would say the early conversations were more about what kind of role could we play, because of the things we knew, but also given a lot of the conversation on this panel, how do you start up a non-profit health insurance company, given our expertise. That is one batch of conversations. The conversations that were later on were much more after the award in terms of the starting implementation. So in our application, we had really envisioned a very wide role in terms of IWS providing the backend services and HHS really had a different role of how you would launch and what you would do. That is when we started running into difficulties, because, forgive me for being a dogged person, either a charm or a fault, but I really know what you need to do to get something off the ground. And as we have seen, perhaps the Federal Government hasn't had that same level of expertise in some areas.

Mr. LANKFORD. Listen, I would say the Federal Government doesn't have expertise in a lot of areas. I understand that. That is what is interesting to me in this, for you particularly. You are right, you bring expertise to this and experience to this. But the law specifically forbids it. And that is what makes it so difficult. A CO–OP is being set up that you can't advertise, can't have any experience in doing it or related activities in a related organization, trying to start an insurance CO–OP, and I can't imagine a worse time to start anything healthcare related dealing with insurance than right now when the rules are changing all the time. The deck could not be more stacked against the CO–OPs based on how the law is written.

So CMS and HHS, they are figuring this out and saying, okay, we will just shift the law then. We will just change it and try to shift it around. One of the emails, and again, you were incredibly transparent with us during the walkthrough, one of the emails we had, apparently you had suggested at some point that HHS could exclude organizations that are exempt from Federal taxation to try to find some way to be able to connect and say, how can we help provide some determination on this, so entities that have experience can actually engage in it. Again, that is not the plain reading of the law. I don't know how that actually went through. Do you know how that finished out?

Ms. HOROWITZ. Well, first, would it be okay if I saw those emails? I would just prefer to.

Mr. LANKFORD. Sure it would. Absolutely. We can get a chance to bring those to you. But the way this particular piece that we had, just from the emails that you had provided to us, and thank you for that, HHS could exclude organizations that are exempt from Federal taxation from the definition of a related entity. This solution would allow organizations like Freelancers Union to participate in the program.

By the way, an entirely reasonable request. It is a workthrough, that is not the plain reading of the law. That is your responsibility, to try to find a way to work through it, it is their responsibility to actually enforce the law they chose not to do.

Ms. HOROWITZ. If it is possible, if I could just take a look at that email that you are referring to.

Mr. LANKFORD. I will. I have just a part of this report that apparently is so devious. I will bring this to you in a moment. But you don't have to comment on it, because you don't have it right in front of you.

Ms. HOROWITZ. If it is okay, one thing that you had said about the it, and that Freelancers couldn't do it, the law, the law made clear Freelancers Union could not be a CO–OP. But clearly, as there was rulemaking, as you do every day and know far better than I, it really is to clarify and make granular. And in this particular law, as we all know, having read it, it was a very short document. It was six pages. It really did not define what this was to be. And so that is the role that we played.

And I know that this isn't in any way how you are saying this, so please, hear this with respect, it was our job as citizens, when you feel that you have something to offer, to come forward. It is about service. And that is our orientation. Whatever happens in D.C. is a world unto itself. But when citizens come from the other parts of the Country to do the right thing, that is what we do. And that was the spirit that we did that in here.

Mr. LANKFORD. And that is why I prefaced all this statement with this. This is an issue of how the Administration is applying the law. The law is clear in some of these areas. But it is changing all the time. It is affecting the CO–OPs. The CO–OPs were intended to be in areas where there wasn't high competition, but they ended up in areas where there is very high competition. Those that were involved in related activities couldn't be involved in it, they were trying to figure out a workaround on that. This is an issue where the Administration, both the startup funding and the solvency funding. And by the way, can I ask the $25 million that went to IWS, what percentage of that is the startup funding? Do you remember the startup loan? Because you got $340 million, the largest portion of that is actually the solvency loan. What percentage of that is the startup loan?

Ms. HOROWITZ. You know, I don't.

Mr. LANKFORD. Do you remember the size of the startup loan at all?

Ms. HOROWITZ. About $46 million, I believe.

Mr. LANKFORD. So $46 million of the startup loan total, around there, plus or minus, we won't hold you to that exactly, $25 million of that actually comes through IWS in the operation of it.

Ms. HOROWITZ. If I could just explain, I don't know if this is helpful, but really, if you look at it for the first, the first parts are really where it starts to grow, then it builds. Because remember, we are building three websites, connecting three billing and enrollment vendors, claim vendors, so they only have to do it once, rather than having, in other words, they have the economies of scale.

After December 31st, the sponsorship ends, and the amount is just much smaller and will eventually probably stop.

Mr. LANKFORD. One quick question, then I want to pass this off to Chairman Jordan and see if he has additional questions as well. By the way, you should have, instead of building your website, you should have just partnered with healthcare.gov. That would have saved you all a lot of money. That would have been so much easier.

Ms. HOROWITZ. It is funny, but actually we really build them all in the cloud using state of the art technology. When we look at the insurance companies that are on the market, both non-profit and for-profit, ours is actually state of the art using cloud technology and using a system that is unbelievably efficient, because it doesn't require these in-house clunky old legacy systems.

Mr. LANKFORD. It is quite remarkable to me how often the private sector can get a job done, and to be able to accomplish that, without the government saying, we can do this better. Very often, when the government steps in to do it, it ends up being much more complicated and very, very expensive.

I have one quick question, and I am going to pass it off to Chairman Jordan as well. Ms. VanRiper, the numbers. We talked several times about the numbers. When do you think we will have good enrollment numbers, good viability pictures of how this is coming together? You have all the good examples. When will we have the other 23. There is a tremendous amount of money and taxpayer risk here.

Ms. VANRIPER. Yes, thank you. Understood. It is my understanding that HHS is going to release enrollment numbers.

Mr. LANKFORD. We have petitioned that multiple times, actually. We started making the requests of them to try to get those numbers. And it has been an interesting, slow walk to be able to get those numbers. So do you know when the CO–OPs are going to release those, or should we reach out to the CO–OPs directly?

Ms. VANRIPER. I think you perhaps, at least the larger committee has already done that. There are inquiries out to every CO–OP.

Mr. LANKFORD. We have, and it is my understanding that HHS was not very happy that we were reaching out to the CO–OPs directly on that. But that is one that we are trying to reach out and be able to gather those numbers directly.

Ms. VANRIPER. I would love to be able to just produce the numbers right now, but we just don't have them from all the CO–OPs.

Mr. LANKFORD. Thank you.

Chairman Jordan?

Ms. VANRIPER. If I may?

Mr. LANKFORD. Yes, ma'am.

Ms. VANRIPER. I just wanted to clarify something, a question you asked me earlier. I got a little confused there. It was on the 8 to 9 percent lower rates for States with CO–OPs. That is really just, I was looking at historical information. That is comparing States,

the prices for premiums for States that have CO–OPs versus States that don't have CO–OPs. That is the difference there.

Mr. LANKFORD. Well, we won't know the actual economic effect of that for a while, of what it means for a CO–OP to be in the State to get to the premium, that will be several years before we actually know if it is driving costs down.

Ms. VANRIPER. Well, hopefully not too many years, but yes.

Mr. LANKFORD. It will take a couple just to be able to work out the costs. I will be very interested to see what happens to premiums in this October, November, December for January of next year. Because once we have a full year of the Affordable Care Act under our belt, we will know a lot more.

Ms. VANRIPER. Absolutely.

Mr. LANKFORD. Chairman?

Mr. JORDAN. Thank you, Mr. Chairman.

Ms. Horowitz, you said you weren't a Washington insider, you are not exactly in tune with how D.C. operates. And yet I will go back to the presentation you gave at the IWS business development plan power point, where you said Freelancers Union supports the goals of power in markets and power in politics. I will go back to the email sent to your lobbyist, I think this calls for an SOS to Liz Fowler and high level friends. If that is not functioning in the Washington world, I don't know what is.

And now we learn, I guess I didn't quite put it together, now we learn through the Chairman's questioning that of the $46 million startup loan given to the CO–OPs, you got 54 percent of the money. You got $25 million.

Ms. HOROWITZ. That was to start the three CO–OPs. That was not profit on the part of IWS.

Mr. JORDAN. It came to IWS, though, right?

Ms. HOROWITZ. The CO–OPs, as——

Mr. JORDAN. Of the $46 million the CO–OPs got, $25 million came to IWS.

Ms. HOROWITZ. Can I explain?

Mr. JORDAN. Sure.

Ms. HOROWITZ. So the CO–OPs received the startup and the $340 million together. And as we made clear and as we said, we have been transparent, it was in our application, we said we are going to provide these services. And we explained each one of those.

Mr. JORDAN. I am going to do the numbers. Of the $340 million that the three CO–OPs got, $46 million was startup. That was your answer to the Chairman's question, correct?

Ms. HOROWITZ. I am sorry, what?

Mr. JORDAN. The Chairman asked the question, what was the startup loan. You said $46 million, $25 million of that came to IWS. So you have also said $340 million went to the CO–OPs. So that leaves approximately $300 million more dollars. Are you getting some of that money as well? Is IWS, I should say, getting some of that money as well?

Ms. HOROWITZ. May I answer?

Mr. JORDAN. Sure.

Ms. HOROWITZ. Okay. So as I believe Dr. VanRiper has explained, the total money doesn't just go to the CO–OPs. They have to pass different milestones.

Mr. JORDAN. I understand that.

Ms. HOROWITZ. So over the course of starting and launching, which are obviously the most expensive times, because you are building all your infrastructure.

Mr. JORDAN. Got it.

Ms. HOROWITZ. So what we did was, taking three of the CO–OPs' systems and integrating them, building up their website, their backend processes, integrating everything, setting up their staffing, that is what it cost to start them on time and on budget. As Congressman Meadows said, I too am a small business person. And when you are looking at project like that that has not been done before, I think everybody in this room would agree, there are risks. And so we managed to our budget and had a 12 percent profit, which again, we would have been happy with an 8 percent profit, but we could have lost everything.

And so what we did is, we delivered these and they are all functioning, while some of the exchanges are not, ours are on time and on budget.

Mr. JORDAN. I appreciate the fact that you did work. I would expect you to do work if you got a contract and you are sponsoring these entities. What I am asking is the numbers. Forty-six million in the startup loan, your response to the Chairman was, $25 million of that came to IWS. Is that correct?

Ms. HOROWITZ. Yes.

Mr. JORDAN. Okay. Now, there is an additional approximately $300 million going to these CO–OPs over a course of time, solvency loans, et cetera. I get that. I am asking, are you getting some of that money as well?

Ms. HOROWITZ. So the only thing that we——

Mr. JORDAN. That is a simple yes or no. Are you getting more money? Is $25 million the limit? Or is IWS getting more than that?

Ms. HOROWITZ. I take seriously what Chairman Lankford said that this is a conversation and that you would want to actually hear my answer. And so if I may, I would really like to give you an answer.

Mr. JORDAN. Okay.

Ms. HOROWITZ. So the sponsors, our job as sponsor ended December of 2013. The only thing left that we are doing with the three CO–OPs, as I believe I told your staff, was IT, managing the website for both New York and New Jersey. And Oregon will be building their own and we will be supporting that. So likely it will end in 2014 for sure with Oregon. But they may decide to build their own. Whatever they want to do is whatever they want to do. The amount will be significantly less, which is why I can't say a simple yes or no. It is a very small amount comparatively.

Mr. JORDAN. But so you are receiving some, on an ongoing basis, some of it ended, from two States it ended in December, but in Oregon it could continue?

Ms. HOROWITZ. The contract is a one-year contract.

Mr. JORDAN. Okay. Did any, when the startup of these CO–OPs, I am just curious, was there any private capital put up as well, or was it all done with the $46 million of taxpayer money?

Ms. HOROWITZ. For the three CO–OPs? It was a—I don't want to speculate, but I believe it was all the CO–OP money.

Mr. JORDAN. No private investment? Okay. If I could, Mr. Chairman, I want to get others who have been patiently listening and waiting. I want to get your comments if I could, Dr. Herrick, Dr. Stark and Mr. Roy, just on the Vermont disaster. What happened there? Just your thoughts. I don't know if you have analyzed that particular case, but here is one that failed, lost taxpayer money, gone, Mr. Fleischer wouldn't even come answer our questions, even though he got paid a pretty large amount of money for sitting on the board. So if we could, Mr. Chairman, go through it and I will be done for the day.

Dr. Herrick?

Mr. HERRICK. As I stated before, the CO–OPs were essentially a political compromise. The progressives, the left of center progressives in Congress wanted to have a public plan option. Supposedly without marketing, without advertising, without profit, this would force the legacy insurers to keep their costs down. It is very naive. And of course, you asked specifically about Vermont. I think probably the bright side with Vermont is that in fact, the plug was pulled, because it obviously could not succeed.

And that is true of many of the other States. The CO–OPs in all the other States, there really is no competitive advantage. There is nothing that the CO–OPs can do that the legacy insurers cannot do. And I think it has been demonstrated in this committee here.

Mr. JORDAN. Do you think the three CO–OPs sponsored by Freelancers, do you think they are going to succeed? Have you had a chance to look at what is happening there?

Mr. HERRICK. I haven't really had a chance to analyze it. I think, as Chairman Lankford mentioned, they probably have more experience than all the others. So from that standpoint, they will probably fare better than the other 23.

Mr. JORDAN. Well, to fare better than Vermont is not saying a whole lot.

Mr. HERRICK. Well, that is true. I think what will happen is the weaker ones will probably just fall apart very quickly. The stronger ones will muddle along, having no real impact on their markets and just barely stay alive, doing nothing to lower premiums or really providing services that weren't already being provided. I find it very interesting that, all the cooperative are in States that had a lot of competition. The idea was these should be in the rural areas, these should be where the risk pools are too small for the legacy insurers to really want to bother with. That is not what we have seen. We have seen that they seem to be going into the same areas with large populations and established networks, for reasons that I guess it is easier to do business there.

Mr. JORDAN. But also, access to, if you can provide, if you have taxpayers subsidizing your model, you can offer it at a lower cost and you can grab market share, right? That is why they are going to these areas, because that is where the people are. And they say,

wait a minute, we can provide a product cheaper because we have $340 million from the taxpayer.

Mr. HERRICK. I think having taxpayer subsidies is something that a lot of businesses would love to have. Luckily, that is not the case in most businesses. But yes, I agree that it seems to be, there is really a lot of naive thinking that CO–OPs have come in and somehow they are something different. It is not clear to me that they have the advantages that the other insurers already had.

Mr. JORDAN. Thanks, Mr. Chairman. Obviously Mr. Meadows is waiting, but if Dr. Stark and Mr. Roy want to say something, whatever you choose.

Dr. STARK. Let me just comment, one thing, I think it is much too early to know whether these solvency loans are going to be called in or not. Especially with, as I mentioned, guaranteed issue and community rating. Our existing insurance companies, really they are very, very concerned about those two insurance mandates. And several large claims could wipe out those solvency loans very, very quickly. And that is my concern. Even if you are viable today, what is your viability in 12 months, 24 months, 36 months and so forth.

Mr. ROY. A couple of points, three points quickly I will try to make. The first is that Vermont famously is attempting to install a single payer system in their State. So in a sense, they have as much incentive as anyone to try to get government-sponsored plans in there. So it is particularly notable that the CO–OP was not licensed in Vermont. The Manhattan Institute study I cited earlier, which I know I have discussed with this committee previously, the average 40 year old in Vermont will face individual market premium increases of 125 percent under the ACA, compared to 2013 rates. So Vermont is one of the States seeing the highest premium increases in the Country.

One of the points I want to make, the final point I want to make is on this issue of how the CO–OPs are pricing their plans. There has been a lot of discussion in the House of Representatives about the risk corridors in the ACA and how those are a form of potentially taxpayer bailouts. I think this is a good example of where that is most likely to be true, which is that CO–OPs, first of all, having no experience in pricing these products, two, having no negotiating leverage with providers and therefore having higher reimbursement rates with the hospitals and doctors, are likely to underprice their products to be competitive and gain market share, even though their costs are likely to exceed the premiums that they are charging, and therefore they are going to be loss-making entities. But they are going to benefit from these risk corridors and other adjusting features in the law. They are the most likely to be reckless in the way they price their premiums and require further taxpayer support to compensate for that fact. I think that is something this committee can be useful in looking into.

Mr. LANKFORD. Dr. VanRiper, Ms. Horowitz asked about the private funding versus the startup funding on it. How common is it among the 23 CO–OPs that are out there that the majority of the funding for startup was all Federal? Do you know how much private money was put in at the start?

Ms. VANRIPER. Thank you. I think it's fair to say that with all the CO–OPs, the majority of the money came from the Federal Government. Some of them have had more luck than others in attracting private funds, and many of them have.

Mr. LANKFORD. When you say majority, you mean just, as a ballpark, obviously I am asking you to pull a figure just out of your head on this. Eight percent? Fifty percent? Ninety percent? What do you think is a ballpark figure of the Federal dollars versus private dollars?

Ms. VANRIPER. I couldn't venture a guess on the percentage. I would say a substantial majority.

Mr. LANKFORD. Do you think it is higher than 80 percent?

Ms. VANRIPER. In some cases it might be, in other cases not.

Mr. LANKFORD. A majority higher than 80 percent Federal dollars?

Ms. VANRIPER. I don't know.

Mr. LANKFORD. Is there a way we can get that figure, do you think?

Ms. VANRIPER. One thing to understand is that as a trade association, we can't make them give us information.

Mr. LANKFORD. I know. You are helping integrate, helping them answer questions and navigate this stuff.

Ms. VANRIPER. Sure.

Mr. LANKFORD. I get that. But there is also a common conversation that is there, to be able to determine as they are starting up.

Ms. Horowitz, just a quick question on that. Do you have any idea from the other CO–OPs? Is your percentage pretty close to what theirs is?

Ms. HOROWITZ. Because our sponsorship has ended, and they were independent, we literally haven't been at any meetings for probably a year and a half to two. I am not even talking to the other CO–OPs.

Mr. LANKFORD. Thank you. Mr. Meadows?

Mr. MEADOWS. I thank each one of you for your testimony today and for your patience. Dr. VanRiper, I want to come back to you on a couple of issues. Out of your member CO–OPs, you are a trade association, out of those member CO–OPs, how many of those members are in rural States?

Ms. VANRIPER. Again, I wish I had those exact numbers for you. But I can tell you, for example, CO–OPs in Maine, Kentucky, South Carolina that have rural populations, Iowa, Montana, Louisiana.

Mr. MEADOWS. So you have some in rural States. So the average premium in those States where there is insurance providers, the average premium the CO–OP would charge versus the private sector, BlueCross BlueShield, say, what is the difference in your premiums? How much are they saving by going with the CO–OP versus going with BlueCross BlueShield?

Ms. VANRIPER. I can give you an example of, say, a Montana price compared to a Wyoming price where there is no CO–OP.

Mr. MEADOWS. That is not what I am asking. I am asking, when you are competing head to head, your analysis early on was that this was driving costs down. The only way to drive costs down is to drive premium costs down. And so I would assume that based

on your testimony, you would have documentation on how much cheaper your premiums are for CO–OPs versus a private carrier.

Ms. VANRIPER. Well, sure. I mean, we definitely, it is public information what all the prices are on the exchanges through the qualified health plans, what those prices are and how they compare.

Mr. MEADOWS. So they are not cheaper. Is the CO–OP cheaper than the private insurance? I guess what I am saying is, why would I go to a CO–OP? Why would I do that? Is it going to be cheaper? Or should I go to all the people that I represent in North Carolina and say, this CO–OP is the best thing coming, because you know what, our premiums, your premiums just jumped by $180 a month. If you had a CO–OP here, it would only go up by $80. But that is not happening.

Ms. VANRIPER. Well, that is because you don't have a CO–OP in North Carolina.

Mr. MEADOWS. But that gets to the specific question that I just asked. Give me real numbers from New Jersey. Is it cheaper to go with a CO–OP than it is with a private sector provider? The answer is no.

Ms. VANRIPER. I can provide you, after this hearing, the numbers in all the States for all the plans selling through the exchanges. What our figures tell us is, as an average, if there is a CO–OP in your State, you are going to have 9 percent lower premiums on those market——

Mr. MEADOWS. We have already gone there. That is a red herring.

Ms. VANRIPER. Is it cheaper, okay. Well, let me answer that. In some cases it is, and in some cases it isn't. A report by the McKenzie Consulting Group recently found that 37 percent of the lowest prices in the health exchanges were CO–OP prices.

Mr. MEADOWS. All right, so let me ask you this. How, with, you can't seem to answer my question directly, how in the world do you market that to a consumer? If I am going to get health care coverage, and I am going to go to a CO–OP, and let's say I am going to go to BlueCross BlueShield, what is the difference in premiums in New Jersey? Do you know that figure?

Ms. VANRIPER. I do not know that figure off the top of my head.

Mr. MEADOWS. So how do you market it to the consumer if you don't know? How do you know——

Ms. VANRIPER. I am not marketing a CO–OP plan to the consumer.

Mr. MEADOWS. Well, that may be the problem why we are having a problem with CO–OPs, is because we are not marketing.

Ms. VANRIPER. Let me explain something. All CO–OPs do marketing. They cannot use Federal dollars, but they have scraped up money from some other place to do marketing. In spite of the prohibition on using Federal loan money for marketing, I just gave you some statistics. Some of them are doing pretty darned good, even at this early stage. And that would be the selling point.

Mr. MEADOWS. So what would be your testimony today, if I were to go to a CO–OP, it is consistently how much cheaper than the private sector to buy insurance?

Ms. VANRIPER. I—all I can tell you is what I said before, because I cannot tell you State by State what the price is.

Mr. MEADOWS. New Jersey?

Ms. VANRIPER. I don't know. I told you that. I don't know exactly what the pricing is there versus other places.

Mr. MEADOWS. All right. Mr. Chairman, I yield back.

Mr. LANKFORD. Long afternoon, we started an hour late because of votes, then we had a two-hour conversation on this. I really appreciate your coming. This is the first hearing on this topic. This is a $2 billion piece of the Federal budget. It is important that we get a chance to have this conversation. This conversation will advance with members of the Administration as they are trying to work through the process of how they are handling the regulations on this. The information that you all brought today, both in your written testimony and in your oral testimony was incredibly beneficial to us, to get some perspective of what is happening and how you are trying to manage it. Obviously there are lots of numbers and facts and figures still to come as this rolls out in the next couple of months. And time will most certainly tell where this comes out.

Proverbs says, wisdom is proved right by her children. This will be one of those moments to be able to look at and say, what are the children that are born from this process and where does this go. I would like to thank all the witnesses for coming and taking so much time from your busy schedules. The committee will stand in recess until we get a chance to finish testimony of a witness that did not arrive today.

Thank you.

[Whereupon, at 5:05 p.m., the subcommittee was recessed, to reconvene at a later date.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman

Examining the Administration's $2 billion ObamaCare Loan Guarantee Gamble: Two Case Studies of Political Influence Peddling and Millions of Taxpayer Dollars Wasted

Staff Report
U.S. House of Representatives
113th Congress

February 5, 2014

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Executive Summary

The Committee's examination of ObamaCare's Consumer Operated and Oriented Plan (CO-OP) program reveals that the program has jeopardized up to $2 billion in federal taxpayer money. The ongoing oversight has uncovered numerous examples in which companies selected to receive CO-OP loans are plagued with legal and financial issues. The Committee's oversight has also shown that the companies receiving CO-OP loans oftentimes have strong political ties to the Obama Administration. The Committee's findings to date raise troubling questions, not only about the administration of the CO-OP loan program, but also about the effectiveness of ObamaCare implementation in general.

The ObamaCare CO-OP model is similar to the member-owned banking model of a credit union in the private sector. CO-OPs are intended to be nonprofit health insurers funded by their customers that provide care in the individual and small group markets. The key difference, however, is that unlike self-sufficient credit unions, the taxpayers foot the bill for the ObamaCare CO-OPs.

This Committee staff report profiles two organizations who received federal funding through the CO-OP program: the Freelancers Union, which sponsored three CO-OPs in New York, New Jersey, and Oregon; and the Consumer Health Coalition of Vermont. As detailed in this staff, Freelancers Union used its political influence to participate in the program despite being ineligible under the ObamaCare statute. Documents and information provided to the Committee show that Freelancers Union sought to benefit both financially and politically from its involvement in the CO-OP program. This report also presents the case of the Vermont Health CO-OP, which failed to receive the proper state licensure to sell insurance. The licensure denial opinion portrays the Vermont CO-OP as a dangerously insolvent and poorly managed entity.

The shortcomings evident from these two entities raise serious concerns about the overall viability of the CO-OP program. The Committee's ongoing oversight has identified instances in which HHS approved loans for companies with existing insolvency, personnel mismanagement, and legal issues. In addition, the Committee's oversight has uncovered evidence that some companies attempted to influence the Administration to modify program eligibility requirements in the statute. The Committee has discovered communications that demonstrate a politically cozy relationship between company executives and the Obama Administration.

The Committee's initial findings are eerily similar to the findings of the Committee's investigation into the Energy Department's $14.5 billion § 1705 loan program.[1] The recent bankruptcies of Solyndra, Beacon Power, and Abound Solar, which collectively received nearly $1 billion in loan guarantees under the § 1705 program, highlight the problems that occur when the government picks winners and losers. The shortcomings of ObamaCare CO-OPs

[1] H. Cmte. on Oversight & Gov't Reform, *The Department of Energy's Disastrous Management of Loan Guarantee Programs*, 112th Cong. (2012).

demonstrate HHS's mismanagement of the CO-OP loan awarding process as well as serious deficiencies in the Administration's healthcare reform efforts as a whole.

This staff report presents the Committee's initial findings about the ObamaCare CO-OP program. This report demonstrates how HHS loan commitments through the CO-OP program expose taxpayers to excessive risk as these companies begin to offer coverage through the new health insurance marketplaces. Recognizing these concerns, Congress reduced funding for the program from $6 to $3.8 billion in April 2011. In January 2013, Congress rescinded further program funding, but not before the Department of Health and Human Services had approved $1.98 billion in low-interest CO-OP loans to 24 companies across the country. Because CO-OPs remain operative in the consumer insurance marketplace and billions of taxpayer dollars remain at risk, the Committee continues to receive information from the CO-OPs and will continue to conduct vigorous oversight of the program.

Initial Findings

- HHS's CO-OP loan program received bipartisan criticism from the beginning because the model was virtually untested in the health insurance marketplace and "adverse selection" meant it would be costly to administer. The Department of Health and Human Services therefore took a costly gamble by distributing $2 billion in taxpayer money to companies that were oftentimes hastily assembled and, according to experts, may not be able to attract the right balance of enrollees to keep premiums at reasonable levels.

- The solvency of the CO-OP loan program has been debated from the start. The Office of Management and Budget projects that taxpayers would lose 43 percent of loans offered through the program in its FY 2013 budget statement. In other words, the Administration's own assessment shows that taxpayers stand to lose $860 million from CMS's $2 billion investment into 24 CO-OPs across the country. Independent reviews of company applications conducted by an outside consultant and approved by CMS confirm the concerns that many CO-OPs have significant legal and financial issues.

- Under the plain language of the ObamaCare enacting legislation, Freelancers Union is ineligible to receive CO-OP program funding due to its subsidiary relationship with a for-profit insurance company. Freelancers Union, however, actively lobbied CMS to influence the drafting of regulations to qualify for CO-OP funds as a CO-OP sponsor.

- Freelancers Union sought to benefit financially and politically from its participation in the CO-OP program. Freelancers Union viewed its participation in the CO-OP program as beneficial to its goal of "power in markets" and "power in politics." Freelancers Union received at least $25 million, via its for-profit wholly owned subsidiary, as a result of its participation in the CO-OP program.

- Freelancers Union benefited from a cozy relationship with the Obama Administration. Freelancers Union interacted with White House officials frequently, even successfully appealing to the White House to arbitrate disputes with CMS.

- The Vermont Health CO-OP was not a financially viable business model. The state's Department of Financial Regulation denied the company licensure because its "unrealistic" budget and enrollment projections created a "high likelihood" that the company would become insolvent.

- Oversight from Vermont Health CO-OP's Board of Directors was lacking. The president of the Board had a conflict of interest and received excessive compensation. The Board itself also overly relied on CMS for guidance and oversight.

- The Vermont Health CO-OP actively lobbied Administration and state officials to find a way around the Affordable Care Act's requirements to operate without licensure.

Background: ObamaCare's risky CO-OP program

The provision of health insurance coverage through non-profit cooperatives emerged as the alternative to the "public option" during the debate over health care reform in 2009.[2] Senator Kent Conrad (D-ND) introduced the idea in June 2009 as "an alternative to for-profit insurance companies, so that there's a different delivery model for competition."[3] Health insurance cooperatives were added as a final piece of the Patient Protection and Affordable Care Act, which authorized $six billion in funding to establish non-profit health insurance issuers throughout the country by 2014.[4] The CO-OP concept meant private entities would serve the small and individual insurance markets both on and off of the new health insurance exchange marketplaces.[5]

The Centers for Medicare and Medicaid Services (CMS), a unit of the Department of Health and Human Services, administers two types of loans through the CO-OP program: start-up loans and solvency loans.[6] Start-up loans, repayable in five years, offer funding to assist with start-up activities associated with developing a CO-OP; solvency loans, repayable in 15 years, enable states to meet insurance solvency and reserve requirements.[7] To be eligible for funding, HHS determined that CO-OPs must be not-for-profit entities that meet state licensure requirements and that any applicant would be ineligible "if the organization or a related entity ... was a health insurance issuer on July 16, 2009."[8]

The CO-OP loan program is part of the federal government's Direct Loan Program (DLP).[9] While DLP loans are inherently risky, the expected taxpayer loss through the CO-OP program is extraordinarily high. By the Administration's own projections, taxpayers should expect to lose over 40 percent of the amount of loans paid out through the CO-OP program.[10] Although CMS Administrator Marilyn Tavenner assured the Committee that the expected loss is a "loan subsidy rate," not an outright "default rate," she conceded that almost half of the 43.2 percent loss projection is because CO-OP loan interest rates are "below Treasury market rates."[11] This extraordinarily high default right makes the taxpayer-funded CO-OP loans incredibly risky.

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[2] *See, e.g.*, Stuart Butler, *COOP d'etat: An acronym does not a co-op make*, WASH. TIMES, (Sept. 24, 2009), http://www.washingtontimes.com/news/2009/sep/24/coop-detat-an-acronym-does-not-a-co-op-make/?page=1.
[3] Ken Strickland, *A new health-care option?*, NBC News (June 9, 2009), http://firstread.nbcnews.com/_news/2009/06/09/4431391-a-new-health-care-option.
[4] Patient Protection & Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010).
[5] *Id.*
[6] Office of Mgmt. & Budget, Exec. Office of the President, Budget of the U.S. Government, Fiscal Year 2013, Federal Credit Supplement, Table 1 (2012) [hereinafter Federal Credit Supplement].
[7] *Id.*
[8] Consumer Operated and Oriented Plan Program, 45 C.F.R. § 156 subpt. F (2011).
[9] Ctr. for Consumer Info. & Ins. Oversight, U.S. Dep't of Health & Human Servs., New Federal Loan Program Helps Nonprofits Create Customer-Driven Health Insurers (2012).
[10] Federal Credit Supplement, *supra* note 6.
[11] Letter from Marilyn Tavenner, then Acting Adm'r, Ctr. for Medicare & Medicaid Servs., to the Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Feb. 12, 2013).

Bipartisan concerns about the CO-OP program

There are widespread concerns about the viability of the ObamaCare CO-OP program. Avik Roy, a Senior Fellow at the Manhattan Institute, has explained why the CO-OP program is designed to fail. He wrote:

> [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.[12]

The CO-OP program received strong bipartisan opposition from its inception. For example, Senator John D. Rockefeller (D-WV) criticized the CO-OP program design in a letter to the Chairman and Ranking Member of the Senate Finance Committee in 2009. Senator Rockefeller wrote: "I believe it is irresponsible to invest over $6 billion in a concept that has not proven to provide quality, affordable health care."[13] Other experts agree. According to Dr. Roger Stark, a physician and health care policy analyst at the non-partisan Washington Policy Center, the CO-OP program is "playing political favorites in handing out the loans, and may be totally illegal in doing so."[14]

Due to these concerns and others, Congress cut funding for the CO-OP program from six billion to $3.8 billion in 2011.[15] The program ultimately dispensed $1.98 billion to 24 companies,[16] before the remainder returned to the general treasury as part of the January 2013 budget deal.[17] The taxpayer dollars already allocated are at considerable risk. A recent study shows that products offered by CO-OPs "are generally higher priced than those offered by more experienced health plans."[18] Adding to these concerns, although some CO-OPs have begun to

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[12] Avik Roy, *Six Solyndras: ObamaCare blows $3 billion on Faulty CO-OP Insurance Loans*, FORBES, May 30, 2012.
[13] Letter from John D. Rockefeller, Chairman, S. Comm. on Commerce, Sci., & Transp., to S. Comm. on Fin. Chairman Max Baucus and S. Comm. on Fin. Ranking Member Charles Grassley (Sept. 16, 2009).
[14] Kenneth Artz, *Obama Administration May Have Used CO-OP Grants to Reward Political Allies*, HEARTLAND INST. (June 29, 2012), http://news.heartland.org/newspaper-article/2012/06/29/obama-administration-may-have-used-co-op-grants-reward-political-allies.
[15] Dep't of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, § XXX, 125 Stat. 38 (2011).
[16] Ctr. for Consumer Info. & Ins. Oversight, *supra* note 9.
[17] Ninety percent of the unobligated balance of funds ($3.4 billion, $2.0 billion obligated) was rescinded as of the date of enactment of the American Taxpayer Relief Act of 2012.
[18] *AIS Survey Data: CO-OPs: Not Necessarily Priced for Competition on Exchanges*, AIS HEALTH WEEK, Nov. 4, 2013, *available at* http://aishealth.com/archive/nrefl10413-03.

report favorable enrollment, it is not clear that others will be as successful.[19] News reports indicate that the websites of several CO-OPs were "difficult to navigate and provided little understandable insurance information" on October 1 – the date that the ObamaCare exchanges went live.[20]

Deficiencies in HHS's awarding of CO-OP funding

In making award determinations, HHS retained consulting group Deloitte & Touche to review CO-OP loan applications, at an expense of $2.4 million.[21] CMS Administrator Tavenner assured the Committee that the CO-OP application process was "rigorous, objective, and independent to ensure the financial strength and sustainability of CO-OPs."[22] Documents reviewed by the Committee suggest otherwise.

Deloitte performed 113 reviews of applicants through seven funding rounds, scoring applicants on a scale of 100 based on compliance with the program's Funding Opportunity Announcement.[23] Applicants were scored mostly on the quality of their business plans, which included criteria such as qualifications of management and key personnel, budget narrative, and loan funding repayment strategies.[24] Information contained within the Deloitte reports raises serious questions and concerns about CMS's selection process for the CO-OP loan program. Although scores varied widely, CO-OPs that passed these reviews typically received a score of at least 70. Of the companies that passed these reviews as well as an additional review from a Committee within CMS, 24 companies were ultimately selected to receive program funding.[25]

Despite this testing, a review of these reports by Committee staff revealed that HHS funded many CO-OPs with structural, management and solvency issues.[26] Actuarial firm Milliman also conducted financial feasibility studies and business plan analyses for each CO-OP. Notably, Milliman published a study outlining several concerns that the ObamaCare CO-OPs could face, including "overstated assets," "fraud," "inadequate pricing and/or inadequate surplus" and "rapid growth."[27] This study is especially concerning because a survey of 16 CO-OPs conduct by the HHS Inspector General shows that 11 CO-OPs have already exceeded the

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[19] Allison Bell, *CO-OPs Start to Report Enrollment*, BENEFITS PRO (Jan. 14, 2014), http://www.benefitspro.com/2014/01/14/co-ops-start-to-report-enrollment.
[20] Richard Pollock, *Obamacare health insurance co-ops mostly not ready for opening day*, WASH. EXAMINER, Oct. 2, 2013.
[21] Richard Pollock, *ObamaCare co-ops being created behind closed doors*, WASH. EXAMINER, Feb. 5, 2013.
[22] Letter from Marilyn Tavenner, *supra* note 11.
[23] Ctr. for Consumer Info. & Ins. Oversight, U.S. Dep't of Health & Human Servs., *Consumer Operated and Oriented Plan [CO-OP] Program Amended Announcement Invitation to Apply*, Loan Funding Opportunity No.: 00-COO-11-001, CFDA: 93.545 (Dec. 9, 2011).
[24] *Id.* at 41-45.
[25] Letter from Marilyn Tavenner, *supra* note 11.
[26] Committee staff *in camera* review (Apr. 26, 2013).
[27] Troy J. Pritchett & Shelley Moss, *CO-OPs: Learning from History*, CO-OP POINT OF VIEW, Mar. 2012, http://publications.milliman.com/periodicals/co-op-point-of-view/pdfs/co-op-march-2012.pdf.

amount of their startup loans.[28] These independent assessments support the Committee's grave concern about the risk to taxpayer-funded CO-OP loans.

The Committee's oversight efforts

The Committee on Oversight and Government Reform began it's oversight of the CO-OP loan program in October 2012. The Committee initially inquired into the health and solvency of three Freelancers Union CO-OPs and a Nevada-based CO-OP due to concerns that the companies were ineligible to receive funding through the CO-OP program.[29] In late March 2013, the Committee expanded its oversight to examine additional companies.[30] In June 2013, after the Vermont Department of Financial Regulation denied the Vermont Health CO-OP a state health insurance license, the Committee requested information from the Vermont CO-OP.[31] Most recently, the Committee and Senator Coburn (R-OK), the Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs, requested revised enrollment figures from all of the CO-OPs in light of the delayed launch of the Administration's HealthCare.gov website.[32]

During the Committee's oversight, the Committee has written HHS Secretary Kathleen Sebelius three letters requesting information about the CO-OP program.[33] Secretary Sebelius did not respond voluntarily to the Committee's requests. It was only after Chairman Issa issued a subpoena in June 2013 requiring the Department to comply with the Committee's oversight that HHS produced some responsive material.[34]

The information obtained by the Committee highlights many of the Committee's initial concerns about the CO-OP program. The Committee's examination has confirmed concerns about the financial viability of CO-OPs as well as the the qualifications of key executives. Furthermore, the Committee's examination shows that some loan recipients may have unduly influenced the final eligibility criteria and that key employees had close ties with senior Obama Administration officials. Although the full extent of realized losses from the CO-OP program

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[28] Office of Inspector Gen., Dep't of Health and Human Servs., CMS Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed, Audit no. A-05-12-00043 (July 30, 2013).

[29] Letter from Reps. Darrell Issa, James Lankford and Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Ms. Sara Horowitz, Freelancers Union & Mr. Thomas Zumtobel, Hospitality Health,(Oct. 2, 2013).

[30] *See, e.g.*, Richard Pollock, *ObamaCare's Solyndra? Oversight panel expands co-ops probe, renews document demand to HHS*, WASH. EXAMINER, Mar. 27, 2013.

[31] Letter from Reps. Darrell Issa, James Lankford and Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Ms. Christine Oliver, CEO, Vt. Health CO-OP (June 18, 2013).

[32] Letters from Reps. Darrell Issa, Trey Gowdy, and Jim Jordan, H. Comm. on Oversight and Gov't Reform, and Sen. Tom Coburn, to 24 CO-OPs (Jan. 15, 2014).

[33] Letter from Reps. Darrell Issa and Trey Gowdy, H. Comm. on Oversight and Gov't Reform, to Kathleen Sebelius, Sec'y, Dep't of Health and Human Servs. (Oct 23, 2013); Letters from Reps. Darrell Issa, James Lankford and Jim Jordan, H. Comm. on Oversight and Gov't Reform, to Kathleen Sebelius, Sec'y, Dep't of Health and Human Servs (March 25, 2013; June, 4, 2013).

[34] SUBPOENA BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA, to Honorable Kathleen Sebelius, served June 14, 2013.

will not be known for some time, the Committee's oversight into these companies reveals serious problems with the ObamaCare CO-OP program.

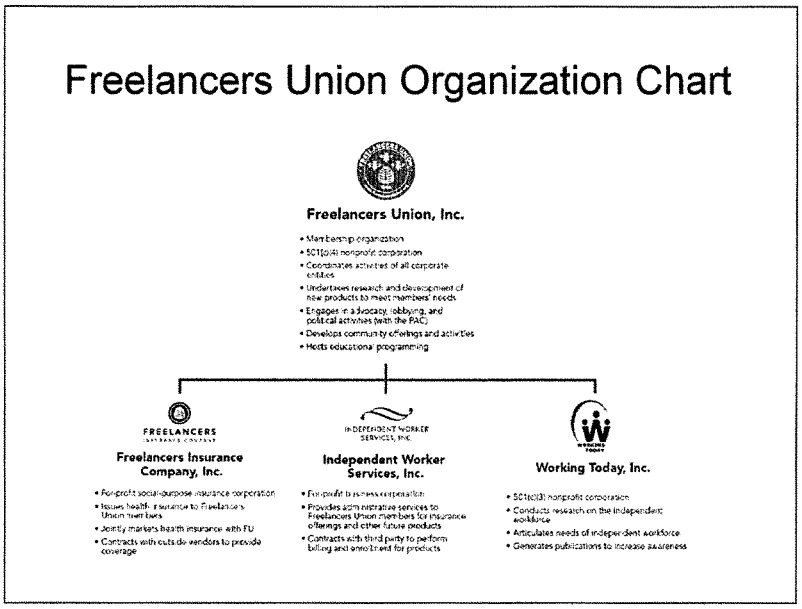
Case Study One: Freelancers Union CO-OPs

Freelancers Union, an association of independent workers headquartered in New York City, sponsored CO-OPs that received the largest three loans. HHS gave Freelancers Health Services Corporation, based in New York; Freelancers CO-OP of New Jersey; and Freelancers CO-OP of Oregon a total of $340 million in CO-OP loans on February 21, 2012.[35] The Committee has substantial reason to question why these three entities received such a substantial federal loan. The Committee's concerns include Freelancers Union's eligibility problems and its lobbying of CMS to participate in the program, Freelancers Union's apparent intention to benefit from the CO-OP program, Freelancers Union's use of political connections to achieve its goal, and serious questions about the solvency of Freelancers Union's CO-OPs.

Freelancers Union did not meet the statutory eligibility requirements for CO-OP funding

Documents and information provided to the Committee show that HHS violated the statute by awarding three loans to CO-OP sponsored by the Freelancers Union. Freelancers Union operates several subsidiaries: Freelancers Insurance Company (FIC), a for-profit insurance corporation providing health insurance to Freelancers Union members; Independent Worker Services (IWS), a for-profit business corporation providing administrative services to Freelancers Union members; and Working Today, a 501(c)(3) nonprofit corporation providing research on the "independent workforce."[36] Because Freelancers Union owns and operates a for-profit insurance provider, it is ineligible for CO-OP funding under the plain language of the statute.

[35] Ctr. for Consumer Info. & Ins. Oversight, *supra* note 9.
[36] Freelancers Union, "Freelancers Union Organization Chart" (transmitted May 17, 2012). [FREE111228-32]



Under Section 1322(c)(2)(a) of the Patient, Protection Affordable Care Act (also known as ObamaCare), entities 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.[37] The law further provides that only a non-profit organization may receive loans through the CO-OP program.[38] Facially, therefore, Freelancers is ineligible to participate in the CO-OP program. Freelancers Union has operated a for-profit insurance wholly owned subsidiary, FIC, since 2008.[39] Moreover, according to FIC's website, it is "a for-profit insurance company owned wholly by Freelancers Union."[40]

In response to the Committee's inquiry, counsel for Freelancers Union asserted that FIC is not a "related entity" of the CO-OPs. He asserted that because "no loans will be made by CMS to Freelancers Union" directly, Freelancers Union's ownership of FIC "does not bar the

[37] Patient Protection & Affordable Care Act, Pub. L. No. 111-148, § 1322(c)(2)(a), 124 Stat. 119 (2010).
[38] *Id.*
[39] Freelancers Union, History, http://www.freelancersunion.org/about/history.html (last visited Jan. 29, 2014).
[40] Freelancers Insurance Company, Freelancers Insurance Company to Begin Operating January 1, 2009 (Nov. 24, 2008), https://www.freelancersinsuranceco.com/fic/news/2008/11/.

three CO-OP plans from receiving CMS loans under the CO-OP program."[41] However, information obtained by the Committee reveals that strong, undeniable ties exist between the three CO-OPs, Freelancers Union, and its wholly owned subsidiaries.

The Committee learned during its oversight that Freelancers Union enjoys a close relationship with FIC and its other subsidiary entities. According to a document obtained by the Committee, Freelancers Union exerts considerable control over its subsidiaries, even to the point of "[c]oordinat[ing] activities of all corporate entities."[42] Freelancers Union and its subsidiaries share the same executives and Board members.[43] Sara Horowitz, the chief executive officer of Freelancers Union and its subsidiaries, testified during a transcribed interview that Freelancers Union also shares office space, employees, officers, and resources with its subsidiaries. She testified:

> Q Ms. Horowitz, you mentioned earlier that there were about 70 employees that report either directly or indirectly to you. Are those employees just for Freelancers Union or for Freelancers Union, IWS, Working Today, and FIC?
>
> A Yes, all.
>
> Q So 70 is for all four of those entities?
>
> A Yes.
>
> Q And do they all – do all the employees, are they – do they perform duties solely for one of the organizations, or are they – they all perform duties for different organizations?
>
> A So most are for all, and then there may be some that are, you know, particularly oriented to one thing.
>
> ***
>
> Q Ms. Horowitz, the employees, the 70 employees we've discussed, do they share office space?
>
> A Yes.

[41] Letter from Ronald G. Blume, Manatt, Phelps & Phillips, to the Hon. Darrell Issa and Trey Gowdy, H. Comm. on Oversight & Gov't Reform (Nov. 15, 2012).

[42] Dep't of Health and Human Servs., *Patient Protection & Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO-OP) Program*, 76 Fed. Reg. 77392-01 (Dec. 13, 2011) (final rule) (to be codified at 45 C.F.R. pt. 156).

[43] H. Comm. on Oversight & Gov't Reform, Transcribed Interview of Sara Horowitz, Freelancers Union, (Nov. 8, 2013) [hereinafter Horowitz Tr.].

Q Do they share office resources?

A What do you mean?

Q Computers, office supplies, that type of thing?

A Yes.[44]

This information makes it clear that Freelancers Union has a unified corporate structure and exerts total control over its subsidiaries. In addition, the Committee also learned that Freelancers Union sponsored the CO-OPs with the expectation that they would execute service contracts with IWS, a for-profit subsidiary of Freelancers Union.[45] An internal document envisions IWS as the central hub of several spokes, including Freelancers Union, FIC, and Freelancers Union-sponsored CO-OPs.[46] This close contractual relationship between the CO-OPs and IWS, which was envisioned when Freelancers Union submitted applications for the CO-OPs,[47] also strongly works against its statutory eligibility to participate in the program.

Under a commonsensical reading of the term, FIC is clearly a "related entity" to Freelancers Union. The entities share a close parent-subsidiary relationship. Freelancers Union coordinates the activities of FIC and the two entities share employees, office space, and office resources. Moreover, the Freelancers Union sponsored the CO-OPs with the intention of having a wholly owned subsidiary provide services to the CO-OPs. Under the plain language of the statute, therefore, Freelancers Union should be ineligible to participate in the CO-OP program because it is "related" to FIC – a for-profit insurance provider that existed prior to July 16, 2009.

Freelancers Union lobbied CMS to issue regulations to allow Freelancers Union to receive CO-OP funding

The Committee's investigation shows that Freelancers Union recognized its eligibility problem and sought a work-around to ensure that the organization would receive CO-OP funding. The lobbying effort was ultimately successful, as the Centers for Medicare and Medicaid Services issued a proposed rule that allowed Freelancers Union to "sponsor" CO-OPs.

Early in the CO-OP program, Freelancers Union recognized that under the plain language of ObamaCare, it was ineligible to participate due to its relationship with FIC. Freelancers Union CEO Sara Horowitz testified:

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[44] Horowitz Tr. at 47.
[45] *Id.*
[46] Freelancers Union, IWS Business Development Plan (June 2012). [FREE 66756- 67]
[47] Horowitz Tr. at 104.

Q Did you have concerns that potentially the law would mean that FIC, or Freelancers Union would be ineligible to sponsor the CO-OPs?

A I thought of it more as again thinking about the larger ACA and what would be all of the different regulations, how they would be interpreted, and it just wasn't clear to me how we would be able to participate.

Q And as a part of that, did you see the possibility that Freelancers Union or FIC would not be able to participate?

A Right, that FIC, I think it was pretty clear that FIC couldn't, and I wasn't sure.

Q Wasn't sure about what?

A Given how we are a Freelancers Union and/or mission, how we would be able to participate in the CO-OP program if at all.

Q Okay. In your opinion, ma'am, are Freelance Insurance Company and Freelancers Union related entities?

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A It's a – it's difficult for me to answer because if you are asking me in the sort of nonlegal sense, like are they related to one another, yes, they are related to one another. I don't know if there is like a legal term of art, and to that I just don't know.[48]

In one e-mail, an independent contractor hired to prepare Freelancers Union's CO-OP applications echoed Horowitz's concerns about Freelancers Union's eligibility, writing: "Here's the part about applicant eligibility that I'm just not sure about (the related insurer not being able to share the same CEO or any board of directors). . . . Though it certainly appears they wrote this section with orgs like Freelancers Union – with related insurance practices – in mind (to allow eligibility)."[49] This concern did not deter Freelancers Union.

Freelancers Union sought to influence the definitions of "related entity" and "sponsor" before HHS issued final regulations to allow these three CO-OPs to qualify for funding. Horowitz began speaking with Barbara Smith, the Associate Director of the CO-OP program at CMS, about the term "related entity." She testified:

Q And have you had occasion to interact with, communicate with HHS officials about the term "related entity"?

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[48] *Id.*

[49] E-mail from Joe Kelly to Diallo Powell (July 19, 2011). [FREE023023-4]

A So Freelancers Union, for sure, yes. And so, yes.

Q And does that include you personally having communications or interactions with HHS officials?

A Yes.

Q Which officials?

A During the process in the early stages offering ideas of how we would want the CO-OP to be structured that would help with Freelancers Union and how we wanted to have things done, and that would be to Barbara Smith.[50]

In January 2011, Horowitz sent a letter to Smith detailing her "primary concern regarding Freelancers Union's eligibility to participate in the program, as well as a few solutions that may help overcome that barrier."[51] The attached proposals included various ideas to narrowly define "related entity" so that Freelancers Union's control of FIC would not bar it from participating in the CO-OP program.[52] In the comment to one proposal, Freelancers Union wrote: "This approach is narrow enough to exclude all entities except Freelancers Union, but may be problematic for just that reason."[53] During her transcribed interview, Horowitz testified that she sent the letter because she wanted to find a way for "Freelancers Union to be able to participate in the CO-OP program."[54]

In another e-mail three months later, Ms. Horowitz suggested that "HHS could exclude organizations that are exempt from federal taxation . . . from the definition of related entity. This solution . . . would allow organizations like Freelancers Union to participate in the program."[55] In March 2011, Horowitz formalized her suggestions, writing a letter to the GAO Advisory Board that outlined the issue following a public meeting on March 14.[56] Her lobbying worked. The final CO-OP regulation, issued in December 2011, included language that excluded related organizations such as Freelancers Union and Freelancers Insurance Company from the definition of "related entity."[57]

Freelancers Union continued to lobby CMS throughout the rulemaking process. In an e-mail on June 1, 2011, Melanie Nathanson, Freelancers Union's political consultant in

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[50] Horowitz Tr. at 112.
[51] Letter from Sara Horowitz to Barbara Smith (Jan. 21, 2011). [FREE038414]
[52] Freelancers Union, CO-OP Regulatory Suggestions and Questions. [FREE38415-9]
[53] *Id.*
[54] Horowitz Tr. at 117..
[55] E-mail from Sara Horowitz to Barbara Smith (March 22, 2011) [FREE17837]
[56] Letter from Sara Horowitz to Dr. Allen Freezor, Chair, Federal Advisory Board on CO-OPs (March 14, 2011), *available at* http://www.cms.gov/CCIIO/Resources/Files/Downloads/sara_horowitz_comments_03142011.pdf.
[57] Dep't of Health and Human Servs., *supra* note 42.

Washington, D.C., asked Barbara Smith to meet with Freelancers Union about its CO-OP plans. She wrote:

> I know you are in the middle of rule-making, but I thought it might be helpful to you and your team to hear from Sara and hers on the work they have been doing to get ready for the COOPs. . . . I know you and your team are weighing a variety of different policy options and I thought it might help you to hear what was happening on the ground . . . .[58]

When asked about why she sent this e-mail to Smith, Nathanson testified that the Advisory Board's recommendation emboldened Horowitz to secure Freelancers Union's participation in the CO-OP program. She testified:

> Well, when the advisory board issued its advice, and, you know, it was very clear that a sponsorship notion could be plausible, Sara pulled – got a team together. . . . So she began to do a lot of work in anticipation of potentially sponsoring five CO-OPs. And so we wanted – you know as well as I do, when the administration is in rulemaking they cannot say anything to you, but there is nothing to preclude anyone from coming in and sharing a point of view or sharing learning in the hopes that they will take that into account as they are writing their rules. And that's what this was.[59]

Nathanson testified that the meeting between CMS and Freelancers Union occurred on June 8, 2011.[60] Just a month later, on July 20, 2011, CMS issued the proposed regulation, including language allowing Freelancers Union to sponsor its CO-OPs.[61] The lobbying effort had worked.

Freelancers Union sought to benefit financially and politically from the CO-OP program

The Committee's oversight has revealed substantial evidence that Freelancers Union sought to benefit from its involvement in the ObamaCare CO-OP program. Documents and information suggest that Freelancers Union employees considered the financial and political benefit that would flow to the organization as a result of the CO-OP program. According to one document produced to the Committee, Freelancers Union sought to participate in the CO-OP

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[58] E-mail from Sara Horowitz to Anne Bollinger, Melanie Nathanson, Althea Erickson, (June 1, 2011). [FREE03865-6]
[59] H. Comm. on Oversight & Gov't Reform, Transcribed Interview of Melanie Nathanson, at 53-4 (Nov. 5, 2013).
[60] *Id.*
[61] Dep't of Health and Human Servs., *Patient Protection & Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO-OP) Program*, 76 Fed. Reg. 43237-01 (Jul. 20, 2011) (proposed rule).

program to further the organization's "power in markets" and "power in politics."[62] Ultimately, Freelancers Union, via its wholly owned for-profit subsidiary, received millions of dollars of taxpayer funds.

Freelancers Union employees communicated openly about the Union's hope to benefit financially and politically from the CO-OPs. In an exchange on December 11, 2010, Althea Erickson, the Advocacy and Policy Director of Freelancers Union, e-mailed Noah Leff, the Chief Financial Strategist of Freelancers Union, about how to describe Freelancers Union's intended financial relationship with the CO-OPs. She wrote: "Defer to you as to what word you're using to describe moving money from the CO-OPs to FU. I used transfer, but I don't think that's right."[63] In response, Leff wrote: "The word I would use is flow, as in '**profits will flow from the CO-OPs to FU, the parent organization**,' or something like that."[64]

When asked about this e-mail during a transcribed interview, Erickson could not explain the distinction in how Freelancers Union described its financial relationship with the CO-OPs. She testified:

> Q When you say, "Defer to you as to what word you're using to describe moving money from CO-OPs to FU," what does "FU" stand for?
>
> A Freelancers Union.
>
> Q And you say, "I used transfer, but I don't think that's right." Why were you struggling to determine what verb to use in that sentence?
>
> A I don't honestly recall. I believe we were working on a document to present to Sara, but, you know, I don't recall.
>
> Q Why did it matter to Sara whether or not you used the word "transfer" versus some other word?
>
> A To be honest, I don't remember.
>
> Q Okay. Maybe Mr. Leff's response will refresh your recollection. He then says, "The word I would use is flow, as in 'profits will flow from the CO-OPs to FU, the parent organization.'" So you have this discussion about whether you want to use the verb "transfer" or "flow." You have no idea why you were having that discussion?

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[62] Independent Worker Servs., "IWS Business Development Plan: June 2012," (transmitted June 28, 2012). [FREE66756-67]

[63] E-mail from Althea Erickson to Noah Leff & Andrew Hunter (Dec. 11, 2010). [FREE 53602]

[64] E-mail from Noah Leff to Althea Erickson & Andrew Hunter (Dec. 11, 2010) (emphasis added). [FREE 53602]

A No, besides just using the right word in the right context for language that you're, you know, writing.

Q Sitting here today, with the knowledge you have now, does it seem like it would be important to you as to how to describe that, the relationship between profits from the CO-OPs and the parent organization?

A No. I'm not certain why that conversation happened. And I – this wasn't an external document, it was an internal document.[65]

Freelancers Union also apparently contemplated how it could benefit by using CO-OP funding to perform lobbying activities. In one exchange from December 2010, several Freelancers Union employees discussed how Freelancers Union could perform lobbying with CO-OP money, despite ObamaCare's express prohibition on using CO-OPs funds for that purpose. Andrew Hunter, a senior business analyst for the Union, wrote to Althea Erickson about how Freelancers Union could use CO-OP funds to advocate for Union priorities. He wrote: "We want to be able to use returns from the CO-OPs to advocate for our members in states where they are served now and served in the future. Example: We will push to get colonoscopy legislation passed in New Jersey . . . ."[66]

Erickson replied: "The bill not only prevents the co-ops from using federal $ to lobby, but the 501c(29) requirements prevent CO-OPs from doing any political activity at all, thought I'm not clear if they make a distinction between issue advocacy and 'political' activity. I think we could argue for issue advocacy with HHS."[67] She continued in a later e-mail: "**The more I think about it, the more I think all lobbying should remain in national FU**. Afterall, [*sic*] FIC doesn't lobby, FU does."[68] When asked about using CO-OP money for Freelancers Union priorities, Erickson testified: "That's not clear to me from this e-mail. Again, I don't remember writing it. I think this was more of a conceptual idea, you know, the profits from the CO-OPs helps sort of advance the mission of the overall whole."[69]

The Committee's oversight also shows that Freelancers Union sought to benefit financially from the CO-OP program by having its sponsored CO-OPs contract with Independent Worker Services (IWS), a wholly owned for-profit subsidiary of Freelancers Union. Sara Horowitz explained the CO-OPs' relationship with IWS during her transcribed interview. She testified:

Q At the time that Freelancers Union submitted the applications for CO-OPs, how did the union see the relationship between IWS and the CO-OPs?

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[65] H. Comm. on Oversight & Gov't Reform, Transcribed Interview of Althea Erickson, (Oct. 30, 2013) [hereinafter Erickson Tr.].
[66] E-mail from Althea Erickson to Andrew Hunter & Noah Leff (Dec. 11, 2010). [FREE 53598]
[67] E-mail from Althea Erickson to Andrew Hunter & Noah Leff (Dec. 11, 2010). [FREE 116312]
[68] E-mail from Althea Erickson to Andrew Hunter & Noah Leff (Dec. 11, 2010) (emphasis added). [FREE 53598]
[69] Erickson Tr. at 80-1.

A The – it was modeled very much on the secondary CO-OPs and the agricultural CO-OPs in America that . . . help to group purchase, and sort of engage in higher level economic activity that bring efficiencies. And so that was the goal and the concept, and what we were hoping was that IWS would be able to do both things like helping to get one enrollment vendor so that the costs would be shared between the three or the technology infrastructure because technology is so expensive, if you could build one thing for three. And so that was one aspect of it. I would say kind of put that into the category of the driving the efficiencies in the business, and then the other was very much trying to make sure, as I spoke earlier about culture, and mission, and that you could have an ecosystem where there would be sort of in the modern way of talking about it like the double bottom line and making sure that the mission was just as important.

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Q I see. And IWS would provide services to each CO-OP?

A Right.

Q Would there be a contractual relationship between IWS and the CO-OPs? How would that work?

A Yes.

Q Between IWS and each CO-OP, or the CO-OPs collectively?

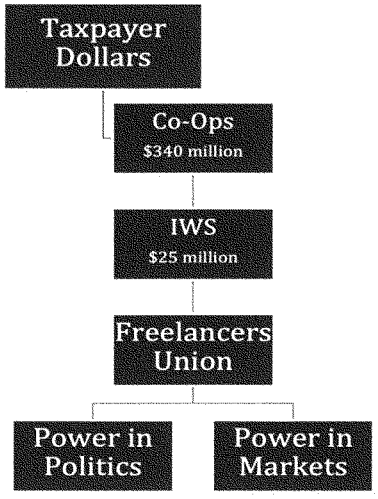
A Each CO-OP collectively. I don't think that – there would be no other way to do it, because they don't have – each three are independent CO-OPs. So, unless they independently formed their own organization, we were negotiating with them.[70]

Documents and information suggest that CMS raised questions about the close relationship between the CO-OPs and IWS. In one e-mail to Rick Koven, the interim CEO of the Freelancers CO-OP of Oregon (FCO), CMS expressed concern about not approving FCO's contract with IWS prior to its execution.[71] CMS prohibited the CO-OP from sending any funds to IWS until it could review the agreement.[72] Meeting notes of a November 2012 meeting between the Oregon CO-OP and IWS similarly reflect that "CMS concerned about: IWS agreement not approved by CMS prior to execution."[73]

[70] Horowitz Tr. at 123-4.
[71] E-mail from Kevin Kendrick to Rick Koven (Nov. 7, 2012). [FREE 57674]
[72] *Id.*
[73] IWS FCO Meeting Notes (Nov. 9. 2012). [FREE 66410-1]

Freelancers Union, through its wholly owned subsidiary IWS, received a significant amount of taxpayer dollars from the CO-OP program. A memorandum prepared in November 2012 in response to CMS concerns about the Oregon CO-OP's contract with IWS indicated that of the $9 million allocated by CMS to the Freelancers Oregon CO-OP at that time, almost $5 million ended up with IWS.[74] Horowitz testified during her transcribed interview that the "total amount of disbursement between the [Freelancers Union-sponsored] CO-OPS to IWS is $25 million."[75] This acknowledgement confirms that Freelancers Union benefited tremendously – to the tune of $25 million of taxpayer funds – from its successful lobbying to participate in ObamaCare CO-OP program.

Figure 1: Freelancers Union: "Power in Politics" and "Power in Markets"



Freelancers Union benefited from its ties to the Obama Administration

The Committee's investigation also suggests that Freelancers Union used its close ties to the Obama Administration to ensure its participation in the ObamaCare CO-OP program. After CMS expressed reservations about the relationship between IWS and the Freelancers Union's CO-OPs, senior Freelancers Union officials appealed to the White House for its assistance. The Freelancers Union ties were so close to the White House that they closely coordinated with the Administration in response to congressional questions about the organization's CO-OP participation.

[74] Response to CMS Questions on FCO- IWS Agreement (Nov. 21, 2012) .[FREE 58048-5]
[75] Horowitz Tr. at 178.

During the CO-OP rulemaking process, Freelancers Union officials and representatives maintained fairly regular communications with Administration officials about CO-OP program developments. According to publicly available White House visitor logs, Sara Horowitz and Melanie Nathanson met with White House officials more than 30 times from March 2010 to late 2013.[76] In particular, Freelancers Union communicated with Elizabeth Fowler, a special assistant to the President for Health Care and Economic Policy and, according to Horowitz, "the person at the White House who was the most involved in the CO-OP program."[77]

On July 18, 2012, after CMS expressed concerns about Freelancers Union's use of IWS to service the CO-OPs, Horowitz e-mailed Nathanson, writing: "I think this calls for an SOS to Liz fowler and high level friends. They [CMS] will truly fuck with the IWS model – we are already seeing evidence of this. I want to start working on this now- can we set up meetings in dc?"[78] When asked about this e-mail, Horowitz testified that she wanted "to bring [the issue] up with people above Barbara Smith to start talking about it."[79] With respect to her concern about CMS disturbing the "IWS model," Horowitz continued: "I believe that we had a model that we put in our application . . . and we felt that the basic principles of it were being pushed away because there were things that CMS was looking to do that didn't make sense to us."[80]

Committee staff questioned Horowitz about Freelancers Union's need to elevate its concerns about the "IWS model" to the White House for assistance. She testified:

> Q And because you thought CMS was messing with the IWS model, you felt the need to go above them to the White House for assistance?
>
> A Well, to the person who was the point person [at the White House] on the CO-OPs, as well as to people at HHS. You know, I think that that's the right thing to do is when you have an issue, you raise it, you say what your concern is, especially if you want to see something succeed. You know, to me, the perfect way to make something not work is to not raise what your concerns are. And I think you do it in the light of day. You do it transparently, and if you can't do it, I could not call those people I don't have a relationship – Melanie has that relationship. There was no legislation pending. She was just helping us, you know.[81]

Freelancers Union's political connections paid off. Horowitz eventually spoke with Fowler and CMS officials. She described the meeting as "a very good meeting because we got

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[76] *Visitor Access Records*, THE WHITE HOUSE, http://www.whitehouse.gov/briefing-room/disclosures/visitor-records (last visited Feb. 3, 2014).
[77] Horowitz Tr. at XXX; *See also* David Leventhal & Anna Palmer, *PI SCOOP ... FOWLER LEAVES WHITE HOUSE FOR JOHNSON & JOHNSON,* POLITICO (Dec. 4, 2012, 2:05 PM), http://www.politico.com/politicoinfluence/1212/politicoinfluence9596.html (last visited Feb. 3, 2014).
[78] *See, e.g.*, E-mail from Richard Swift to Sara Horowitz (July 18, 2012). [FREE114211]
[79] Horowitz Tr. at 206-8.
[80] *Id.*
[81] *Id.*

to kind of clear the air and I think I really got to hear from CMS about what their concerns were."[82]

Freelancers Union continued to utilize Fowler as a high-placed resource. On August 24, 2012, Melanie Nathanson e-mailed Fowler and other Administration officials, writing: "Sara Horowitz is coming to DC to meet with Senator Conrad to discuss the progress that is being made in standing up CO-OPs . . . . Sara is interested in sharing the same information with you that she is giving to Senator Conrad and would love to meet with you all . . . ."[83] After Fowler indicated that she may not make the meeting,[84] Nathanson responded: "Liz, I hate to not have you there. I will make sure you have all of Sara's materials!"[85]

Freelancers Union and the Administration also worked closely to defend the Union from criticism about its eligibility to participate in the CO-OP program. For instance, in February 2012, Freelancers Union's communications manager e-mailed CMS, writing: "I just got off the phone with Ellen in your shop. I wanted to make sure you saw this release from the House Ways and Means committee, attacking the eligibility of Freelancers Union on our coop [*sic*] sponsoring loans."[86] CMS responded by sending talking points about Freelancers Union's eligibility prepared for HHS Secretary Sebelius for an upcoming appearance before the Ways and Means Committee.[87] These talking points detailed how Secretary Sebelius would respond to questions about Freelancers Union's eligibility to participate in the CO-OP program.[88]

It is difficult to assess the precise degree to which Freelancers Union's political connections benefited the organization. Documents and information show a close and consistent relationship that Freelancers Union utilized to its advantage. In this respect, the evidence makes clear that Freelancers Union leveraged its political relationships to ensure that it could participate in the ObamaCare CO-OP program.

Serious questions exist about the viability of Freelancers Union CO-OPs

In addition to the Committee's findings about the manner in which Freelancers Union secured its participation in the CO-OP program, there are several reasons for concern about the fiscal state of Freelancers Union's three CO-OPs. According to recent press reports, Freelancers Union has a record as the "worst" health insurer in the New York state for customer service in

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[82] Horowitz Tr. at 212.
[83] E-mail from Melanie Nathanson to Michael Hash, Elizabeth Fowler, Yvette Fontenot, Chiquita Brooks-LaSure and Barbara Smith, (Aug. 24, 2012). [NH00049]
[84] E-mail from Melanie Nathanson to Elizabeth Fowler, (Aug. 24, 2012). [NH00209]
[85] E-mail from Melanie Nathanson to Richard Popper, (Aug. 24, 2012). [NH00323]
[86] E-mail from Dan Lavoie to Sara Horowitz and Althea Erickson, (Feb. 24, 2012). [FREEE 53588-90]
[87] E-mail from Dan Lavoie to Sara Horowitz and Althea Erickson, (Feb. 24, 2012). [FREEE 53588-89]
[88] *See, e.g.*, H. Comm. on Ways & Means, Obama Administration Continues to Use Health Care Overhaul to Reward Friends (Feb. 21, 2012), http://waysandmeans.house.gov/news/documentquery.aspx?DocumentTypeID=1624.

2011 and 2012 and has had reports of "growing consumer complaints."[89] In addition, Deloitte's independent reviews found several financial and legal concerns about the New York, New Jersey and Oregon CO-OPs. Deloitte noted that IWS "may be overburdened" due to its work with all Freelancer Union-sponsored CO-OPs,[90] and that the CO-OPs need "to perform due diligence . . . over Freelancers Union and IWS."[91] These concerns present serious questions about the long-term viability of the Freelancers Union CO-OPs.

Deloitte noted strong concerns about all three of Freelancers Union's sponsored CO-OPs. For instance, in regard to the New York CO-OP, the consultant noted that the CO-OP's "current [debt] ratio 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."[92] Deloitte also noted that the CO-OP's "reliance on an integrated care model provided and driven by its vendor partners . . . needs . . . detailed plans to perform due diligence over . . . vendors and partners to include Freelancers Union and IWS."[93]

Deloitte noted that the Freelancers Union's New Jersey CO-OP faces competition from "strong . . . long-established" firms and it also predicted that the expenses of the CO-OP would "grow slightly faster . . . than revenues . . . which is a negative indicator of the CO-OP's ability to remain financially solvent in the long-term."[94] Deloitte's review found that Freelancers CO-OP of Oregon's executive team "does not have specific knowledge of the provider and insurance markets in the areas in which it proposes to operate . . . ."[95] Further, the consultant stated that revenue growth is "potentially too aggressive in relation to the applicant's forecasted growth in membership" and that the key weakness with the CO-OP is that they do not "have a strong existing base in Oregon."[96]

In light of these issues raised by Deloitte's independent review, the Committee is concerned about how the CO-OPs will responsibly utilize their taxpayer-funded loans. During her transcribed interview, Sara Horowitz could not provide the Committee with enrollment figures for each of the Freelancers Union-sponsored CO-OPs on November 8, 2013. The Committee has written to each of the three CO-OPs to determine how they are faring in the new ObamaCare exchanges. With millions of taxpayer dollars still at stake in the three CO-OPs

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[89] Richard Pollock, *Consumer complaints swirl around Obamacare's flagship health co-op in New York*, WASH. EXAMINER (Jan. 27, 2014), *available at* http://washingtonexaminer.com/consumer-complaints-swirl-around-obamacares-flagship-health-co-op-in-new-york/article/2542868.

[90] *See* Deloitte Consulting LLP's Freelancers Health Service Corporation's application review, submitted to CMS Jan. 13, 2012.

[91] *See* Deloitte Consulting LLP's Freelancers CO-OP of New Jersey application review, submitted to CMS Jan. 13, 2012.

[92] *See* Deloitte Consulting LLP's Freelancers Health Service Corporation's application review, submitted to CMS Jan. 13, 2012.

[93] *Id.*

[94] *See* Deloitte Consulting LLP's Freelancers CO-OP of New Jersey application review, submitted to CMS Jan. 13, 2012.

[95] *See* Deloitte Consulting LLP's Freelancers CO-OP of Oregon's application review, submitted to CMS Jan. 13, 2012.

[96] *Id.*

sponsored by Freelancers Union, the Committee will continue to closely oversee their health and viability. Unfortunately, none of the Freelancers CO-OPs have responded to the Committee's requests for this information.

Case Study 2: Vermont Health CO-OP

The Vermont Health CO-OP, incorporated as the Consumer Health Coalition of Vermont, received $33.8 million in CO-OP funding from HHS/CMS on June 22, 2012.[97] Three companies with health insurance experience in the state of Vermont – Vermont Managed Care, Inc.; Apex Benefit Services, Inc.; and Fleischer Jacobs Group – were to provide most operational services to the CO-OP.[98] However, the CO-OP never got off the ground. After a thorough eighteen-month review, the Vermont Department of Financial Regulation (DFR) ruled on May 22, 2013, that the CO-OP failed to meet licensure in the state, calling the application itself "fatally flawed."[99]

Following the DFR decision, CMS cut off loan disbursements to the company in May 2013.[100] In a letter dated September 16, 2013, CMS formally informed Vermont Health CO-OP CEO Christine Oliver to "forfeit all unused loan funds" due to "insurmountable obstacles" facing the CO-OP.[101] The decision meant that American taxpayers lost $4.5 million in startup funds for a CO-OP that had been approved by the Administration but that failed to meet even the most basic requirements for state licensure.[102]

Vermont Health CO-OP was unviable and showed "high risk" of insolvency

The Vermont DFR's examination of the Vermont Health CO-OP highlights serious problems with viability of the CO-OP – problems that apparently escaped CMS's review. The DFR found that the company's "liabilities and high proposed rates" would make it "extremely difficult for the CO-OP to remain solvent."[103] Namely, the DFR concluded that the CO-OP's proposed rates for "standard" plans were 15 percent higher, or approximately $73 more a month per plan, than comparable standard plans from competitors.[104] Given that its rates were "significantly less competitive" than initially calculated,[105] the DFR concluded the Vermont Health CO-OP's target enrollment number of 19,645 members in the first year was "unreasonable."[106]

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[97] Ctr. for Consumer Info. & Ins. Oversight, *supra*. note 8.
[98] Consumer Health Coalition of Vermont, Inc., Business Plan, at 7.
[99] State of Vt. Dep't of Fin. 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 (May 22, 2013).
[100] Anne Galloway, *Feds Terminate Loan Agreement with Vermont Health CO-OP*, VT DIGGER, Sept. 16, 2013.
[101] Nancy Remsen, *Vermont Health CO-OP gives up and dissolves*, BURLINGTON FREE PRESS, Sept. 16, 2013.
[102] Bob Kinzel, *Was Vt. Health COOP Undermined by Push for Single Payer?*, VT. PUB. RADIO, Sept. 18, 2013.
[103] State of Vt. Dep't of Fin. Regulation, *supra* note 99, at 12.
[104] *Id.* at 12.
[105] *Id.* at 12.
[106] Id. at 13.

The DFR concluded that the Vermont Health CO-OP would face cumulative losses during its first three years of operation. The CO-OP forecasted that it would lose "approximately $0.8 million cumulatively from 2014-2016," before becoming profitable in 2017.[107] The DFR found otherwise. Carefully examining the CO-OP's unrealistic budget and enrollment projections, the DFR found "a high risk that the CO-OP would be insolvent."[108] The DFR opinion explained:

> [E]ither the CO-OP's rates would be higher than competitors and enrollment would suffer as a result, or the CO-OP's rates would be competitive in the market and insufficient to cover obligations. In either scenario, it is unlikely the CO-OP would remain solvent.[109]

Adding to these concerns, according to the Vermont DFR, the formation of the CO-OP itself was problematic given the state's legal landscape. Specifically, the DFR noted that the formation of the CO-OP conflicts with the state's anticipated implementation of a single-payer system entitled "Green Mountain Care" in 2017, an event that the DFR found would effectively put the CO-OP out of business.[110] Thus, under the particular circumstances of the Vermont insurance industry, the creation of the Vermont Health CO-OP was inherently unviable and ultimately doomed to failure.

The CO-OP suffered from a lack of oversight, conflicts of interest, excessive compensation, and inexperience

The Vermont DFR also identified serious deficiencies in the makeup and actions of the Vermont Health CO-OP's Board of Directors and officers. The DRF decision denying licensure describes serious problems with the key executives' lack of oversight, conflicts of interest, excessive compensation, and inexperience with the health insurance.

According to the Vermont DFR, the Board members left oversight of the CO-OP up to CMS. Several Board members described to the DRF their "very passive role" in overseeing the CO-OP, instead deferring control to CMS, the CO-OP's CEO, and the Board's president.[111] The DFR expressly noted that "the oversight by CMS does not extend to matters of state law . . . and is not a substitute for oversight by the board."[112] Recognizing the risk associated with lax oversight, the DFR noted that the Board's inattention created "an enormous risk" for the standing-up of the Vermont Health CO-OP.[113]

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[107] *Id.* at 13.
[108] *Id.* at 13.
[109] *Id.* at 14.
[110] *Id.* at 26.
[111] *Id.* at 18.
[112] *Id.* at 21.
[113] *Id.* at 22.

In addition, the president of the Vermont Health CO-OP Board created a material conflict of interest that CMS and the CO-OP failed to recognize. Mitchell Fleischer served as the president of the Board and, according to DFR, "ha[d] been a driving force behind the CO-OP's formation and application to [the] DFR."[114] Fleischer simultaneously served as the president of Fleischer Jacobs & Associates, a Vermont-based insurance company.[115] The CO-OP Board allowed the CO-OP to enter into what DFR described as "an illegal no-bid contract" with Fleischer Jacobs "to be the exclusive agent for the CO-OP in soliciting applications for CO-OP products."[116] Although this contract was "reviewed and scrutinized by CMS," the federal agency apparently left this significant conflict of interest unresolved.

The Committee's oversight exposed CMS's failure to appreciate and resolve this significant conflict of interest. In an April 2013 e-mail to the Vermont DFR, Margaret Platzer, the General Counsel of the Vermont Health CO-OP, explained that the Fleischer Jacobs contract "was thoroughly vetted by CMS and their consultants, Deloitte, who had voiced questions related to the potential conflict."[117] In a June 2013 email exchange with Vermont Health CEO Christine Oliver, Robin Fisk, an attorney from Fisk Law office, also revealed that CMS has developed a "tolerance" for "certain conflicts of interest between CO-OPs and vendors...."[118] Ms. Fisk wrote: "I believe that during the loan approval process CMS developed a "tolerance" to certain conflicts of interest between CO-OPs and vendors, probably out of necessity due to the short time for getting the loans done. Obviously the Vt Department of Insurance is using a different standard...."[119] Although CMS appeared willing to ignore this serious problem, the Vermont DRF rightfully identified it as a "stark, ever-present conflict of interest" that "creates insurmountable risk for the CO-OP."[120]

Vermont Health CO-OP leaders also were paid excessively for their services. According to the Vermont DRF, Fleischer's annual salary as president of the CO-OP Board, a staggering $126,000, "eclipsed the salary of the chair of the board of Blue Cross Blue Shield of Vermont, a much larger nonprofit health insurance company, who is paid $28,900 per year."[121] The DFR noted that no evidence exists of discussions by the Board about Fleischer's "surprisingly high salary."[122] "The CO-OP's compensation packages," as found by the DFR, "exhibit a lack of oversight by the board of directors and an outsized influence by the president of the board."[123]

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[114] *Id.* at 18.
[115] According to Fleischer Jacobs' website, Mr. Jacobs has been President and CEO since 1988. *See* Fleischer Jacobs, Staff Directory, http://www.fjgfinancial.com/StaffDirectory/member/MitchFleischer (last visited Feb. 3, 2014).
[116] State of Vt. Dep't of Fin. Regulation, *supra* note 99, at 19.
[117] E-mail from Margaret Platzer to Ryan Chieffo (April 30, 2013). [VCH01455-6]
[118] E-mail from Robin Fisk to Christine Oliver, Margaret Platzer, Mitchell Fleischer (June 3, 2013). [VHC02629]
[119] *Id.*
[120] State of Vt. Dep't of Fin. Regulation, *supra* note 99.
[121] *Id.* at 19.
[122] *Id.* at 19.
[123] *Id.* at 19.

Adding to these concerns, certain Vermont Health executives were not well-qualified for their positions. The DFR found several "weaknesses related to financial responsibility, insurance experience and business qualifications" of the CO-OP's officers and directors.[124] The DFR concluded that key officers of Vermont Health "lack insurance experience and business qualifications commensurate with similar positions in similar entities."[125] Although CEO Christine Oliver had previous experience as a healthcare regulator,[126] the DFR found that she had no experience in operating a health insurance company. Given this inexperience, the DFR predicted that mismanagement could cause "compliance, reputational and financial risks."[127]

Vermont Health CO-OP sought to exert political influence to continue operations despite its licensing failure

Documents and information provided to the Committee indicate that Vermont Health CO-OP officials actively sought to provide insurance coverage without a state license. Section 1322(c)(5) of ObamaCare requires that a CO-OP "must meet all the State standards for licensure" that are required of other issuers.[128] As the Vermont Health CO-OP determined its program eligibility in light of DFR licensure concerns, key CO-OP leaders sought to exercise political influence to benefit the CO-OP.

On November 28, 2012, Fleischer e-mailed Barbara Smith, then associate director of the CO-OP program at CMS, thanking her for meeting with him about their CO-OP's licensure issues and asking if there was "anything else" she could suggest to help the CO-OP with the Vermont DFR.[129] In an e-mail about a month later, CO-OP CEO Oliver addressed the DFR's concerns, explaining that the state regulator had suggested that the CO-OP "prepare to enter the Exchange in 2015 instead of 2014."[130] Oliver commented: "This obviously does not work for us" because the Vermont Health CO-OP was "merely trying to find a path to the Exchange" without receiving licensure first.[131]

The Vermont Health CO-OP also sought to utilize state-level political influence. On December 20, 2012, Oliver wrote about a meeting with Vermont Governor Peter Shumlin, explaining that he had suggestions for how the CO-OP could proceed while their licensure was "pending."[132] On February 12, 2013, Oliver e-mailed Gary Cohen, a senior CMS official, writing: "You may recall that we discussed the potential for you or [CMS] Administrator Tavenner to send a letter to Governor Shulmin recognizing his efforts to stay up to date on the

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[124] *Id.* at 22.
[125] *Id.* at 23.
[126] Andrew Stein, *Vermont Health CO-OP Takes Shape in the Shadow of the ACA Exchange*, VT. DIGGER, Oct. 23, 2013.
[127] State of Vt. Dep't of Fin. Regulation, *supra* note 99, at 24.
[128] Dep't of Health and Human Servs., *supra* note 57.
[129] E-mail from Mitchell Fleischer to Barbara Smith (Nov. 28, 2012). [VHC00748-9]
[130] E-mail from Christine Oliver to Kathleen Scelzo (Dec. 17, 2012). [VHC00843-4]
[131] *Id.*
[132] E-mail from Christine Oliver to Kathleen Scelzo (Dec. 20, 2012). [VHC00854]

Vermont Health CO-OP as we move through the state exchange and licensure processes."[133] Oliver also informed Cohen that "a friend of the CO-OP with a connection to Secretary Sebelius may seek a separate letter from her."[134]

Following the release of DFR's licensure denial, Fleischer pleaded with CMS for leniency. In a May 23, 2013, e-mail, Fleischer wrote: "We have had a chance to review all the information. . . . I wanted you to have a little history because our DOI [Department of Insurance] painted a very unfair picture."[135] During this same time, the CO-OP leaders continued to meet with Governor Shumlin. In a May 28, 2013, e-mail to CMS, Oliver acknowledged having a meeting with the Governor the day before, writing: "He is supportive of CO-OPs generally but his Commissioner advised that we would be insolvent. We were very frank, and so was he. He seemed disappointed that we were not approved...."[136] This considerable political influence proved futile.

The story of the Vermont Health CO-OP is a cautionary tale of how excessive risk, serious conflicts of interest, and inexperience escaped the attention of CMS. If not for the diligent oversight of the Vermont Department of Financial Services, it is entirely possible that American taxpayers could have lost far more than $4.5 million. As a case study of one already-failed CO-OP, the Vermont Health CO-OP raises considerable concerns for the viability of the program in general.

Conclusion

The Committee's preliminary findings about ObamaCare's CO-OP loan program so far tell a story of waste and abuse. Similar to the Committee's concerns about the Department of Energy's §1705 loan program, the Committee has serious concerns about how the Administration chose to award nearly $2 billion in CO-OP funding. The case studies presented in this report paint an unflattering picture for the ObamaCare CO-OP program.

Freelancers Union, the sponsor of three CO-OPs, successfully lobbied the Administration to allow the Union to participate in the program despite its statutory ineligibility. Freelancers Union sought to use its involvement in the CO-OP program to propel its mission of "power in markets" and "power in politics." To this end, $25 million of taxpayer funds loaned to Freelancers Union-sponsored CO-OPs flowed from the CO-OPs to Freelancers Union's wholly owned subsidiary, Independent Workers Services. The fate of the Vermont Health CO-OP also tells a cautionary tale. Due to an unviable business model, mismanagement, poor governance, and conflicts of interest amongst Board members, the company failed to receive licensure to operate its insurance company. American taxpayers are on the hook for $4.5 million in unpaid loans due to bad business decisions and poor oversight by CMS.

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[133] E-mail from Christine Oliver to Gary Cohen (Feb. 12, 2013). [VHC01107]
[134] *Id.*
[135] E-mail from Mitchell Fleischer to Reed Cleary, Kevin Kendrick and Richard Popper, (May 23, 2013). [VHC01495-6]
[136] *Id.*

The Committee is not finished examining the ObamaCare CO-OP program. The Committee continues to review CO-OP information and data. In the weeks and months ahead, the Committee will continue its work to ensure that Congress and the American taxpayers have the requisite information to fully assess the true costs of the ObamaCare CO-OP program.

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