

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

November 24, 2015

Mr. Andrew Slavitt  
Acting Administrator  
Centers for Medicare and Medicaid  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Acting Administrator Slavitt:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing to conduct oversight over the Community Oriented and Operated Plans (CO-OPs) established under the Patient Protection and Affordable Care Act. Under this program, the Centers for Medicare and Medicaid (CMS) was authorized to provide loans to create new non-profit health insurance issuers, intended to increase choice and create competition among insurers.<sup>1</sup> CMS awarded over \$2.4 billion dollars in federal loans to CO-OPs in 23 states.<sup>2</sup> However, of the 23 CO-OPs that sold insurance through federal and state marketplaces, 12 have closed and will not be offering plans for 2016. Eight of those CO-OPs failed in the last month before open enrollment, a recent and troubling trend.

On November 5, 2015, the Subcommittee on Oversight and Investigations held a hearing to examine reasons for the failed CO-OPs.<sup>3</sup> At this hearing, state regulators and representatives of CO-OPs testified about the challenges they have faced to keep CO-OPs afloat. Witnesses representing the CO-OPs specifically cited CMS's risk adjustment formula, lower-than-expected risk corridor payments, an inability to cap enrollment, and limits on outside investors for the demise of so many CO-OPs. Unfortunately, CMS's representative, Chief of Staff Mandy Cohen, was unable to name specific actions CMS will take to fix these problems going forward.

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<sup>1</sup> Dep't of Health and Human Serv., Centers for Medicare & Medicaid Serv., Center for Consumer Information & Insurance Oversight, *Loan Program Helps Support Customer-Driven Non-Profit Health Insurers*, available at <https://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html> (last visited Oct. 29, 2015).

<sup>2</sup> One CO-OP in Vermont failed to obtain a license to sell health insurance in the state, and closed its doors before open enrollment.

<sup>3</sup> H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *Examining the Costly Failures of Obamacare's CO-OP Insurance Loans*, 114th Cong. (Nov. 3, 2015).

The Committee is concerned that CMS does not have a plan to ensure that the remaining CO-OPs are financially solvent. The existing 11 CO-OPs represent over \$1 billion dollars in federal loans that should be paid back to the federal treasury over the next decade. Additionally, the Committee believes that CMS should take actions to recoup federal dollars from failed CO-OPs wherever possible, in order to mitigate the loss to taxpayers.

At the hearing, several members of the Subcommittee were particularly concerned about the closure of Health Republic of New York, which closed in September 2015 after CMS had awarded \$265 million in federal loans.<sup>4</sup> Health Republic's financial condition was worse than initially reported, and will be unable to pay claims for its enrollees past November 30, 2015, leaving 155,402 enrollees scrambling to find new coverage before the end of the year.<sup>5</sup> Specifically, members questioned CMS's decision to award an additional \$91 million to Health Republic of New York in late 2014, when Health Republic had documented and significant financial difficulties. In fact, CMS awarded \$350 million to six CO-OPs in late 2014; three of the CO-OPs that were awarded additional funds closed before open enrollment this year. Given CMS's decision to spend more taxpayer money on failing CO-OPs, the Committee is concerned that CMS is unable to manage the CO-OP program effectively.

To assist with our oversight of the CO-OP program, please provide the following documents and information:

1. CO-OPs have named many factors that contributed to the sudden rush of closures. Please explain what steps CMS plans to take to ensure the existing 11 CO-OPs are financially stable, including:
  - a. Altering the Risk Adjustment Formula;
  - b. Reconsidering limits on outside investors or capital;
  - c. Allowing CO-OPs to cap enrollment, and
  - d. Any other administrative and regulatory changes.
2. In July 2015, CMS told state insurance commissioners that they "anticipate that risk corridor corrections will be sufficient to pay for all risk corridor payments." However, in October 2015, CMS revealed it would only be able to pay 12.6 percent of the risk corridor payment.
  - a. When did CMS know that risk corridor payments would be significantly lower than anticipated?
  - b. Dr. Cohen testified that the risk corridor data was "messy" so issuers had to resubmit it, delaying the calculation of the payments. Please explain why the first round of data was insufficient, and how it was corrected.
3. CMS awarded an additional \$350 million in federal loans to six CO-OPs in late 2014.
  - a. What factors did CMS consider when deciding which CO-OPs received additional loans, and the amount of those loans? Please explain.
  - b. Please provide the analysis CMS used to determine the loan awards.

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<sup>4</sup> Nicholas Casey, *New Yorkers Face Hard Decisions After Collapse of Health Republic Insurance*, NEW YORK TIMES, Nov. 6, 2015.

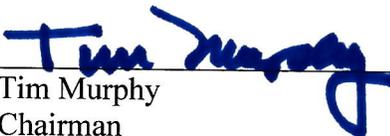
<sup>5</sup> *Id.*

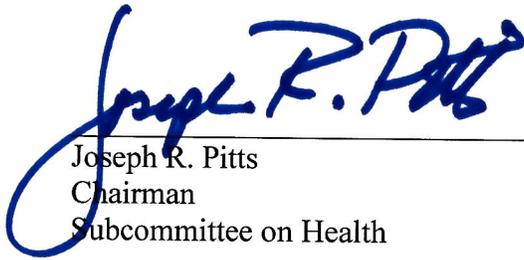
4. CMS has placed some CO-OPs under enhanced oversight plans.
  - a. Please provide the names of all CO-OPs under enhanced oversight plans and the date the CO-OP was placed under an enhanced oversight plan.
  - b. What factors lead CMS to place a CO-OP on an enhanced oversight plan? Please also provide the terms and requirements of the enhanced oversight plan.
  
5. CMS has placed some CO-OPs on corrective action plans.
  - a. What factors lead CMS to place a CO-OP on a corrective action plan?
  - b. Please provide copies of all corrective action plans to the Committee.
  
6. The 12 failed CO-OPs were awarded approximately \$1.23 billion taxpayer dollars.
  - a. When will CMS know how much money will be recovered from the failed CO-OPs?
  - b. What steps is CMS currently taking to recover federal funds from these CO-OPs?
  
7. Health Republic of New York is unable to pay claims through 2015, and as a result, outside insurers stepped in to cover those claimants and pay claims.
  - a. Did CMS play a role in arranging coverage for those CO-OP enrollees? If so, please explain.
  - b. Has CMS received any information indicating that additional CO-OPs will be unable to pay their claims to the end of 2015? If so, please provide information about any additional CO-OPs that may be unable to pay claims.
  
8. Loan agreements have enforcement provisions so that CMS can terminate a loan if CO-OPs underperform.
  - a. Besides the 12 CO-OPs that have already closed, has CMS contemplated enforcement actions against underperforming CO-OPs? Why or why not?
  - b. What factors does CMS consider when determining if a CO-OP is "underperforming" and whether its loan should be terminated?

An attachment to this letter provides additional information about how to respond to the committee's request. If you have any questions regarding this request, please contact Emily Felder or Jessica Donlon with the majority committee staff at (202) 225-2927.

Sincerely,

  
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Fred Upton  
Chairman

  
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Tim Murphy  
Chairman  
Subcommittee on Oversight  
and Investigations



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Joseph R. Pitts  
Chairman  
Subcommittee on Health

cc: The Honorable Frank J. Pallone, Jr., Ranking Member

The Honorable Member Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations

The Honorable Member Gene Green, Ranking Member  
Subcommittee on Health