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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

May 16, 2016

Phil Jackson
Interim Chief Executive Officer
Oregon's Health CO-OP
1 Pacific Square
220 NW 2nd Ave #600
Portland, OR 97209

Dear Mr. Jackson:

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. As part of its continued oversight, the Committee is requesting Oregon's Health CO-OP provide information and documents to help it better understand the financial challenges CO-OPs are facing.

The CO-OP program—established by Section 1322 of the Patient Protection and Affordable Care Act—envisioned giving consumers more heath plan choices and increasing competition among insurers.[1] The Centers for Medicare and Medicaid Services (CMS) awarded taxpayer-funded loans to create new non-profit health insurance issuers.[2] CMS awarded over $2.4 billion dollars in federal loans to CO-OPs in 23 states.[3] Of the 23 CO-OPs that sold insurance through federal and state marketplaces, however, 12 have already closed and will not be offering plans for 2016.

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[1] Patient Protection and Affordable Care Act of 2010 § 1322 (2010).
[2] 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).
[3] One CO-OP in Vermont failed to obtain a license to sell health insurance in the state, and closed its doors before open enrollment.

On November 5, 2015, the Subcommittee on Oversight and Investigations held a hearing to examine the reasons so many CO-OPs have failed.[4] At this hearing, regulators and representatives of CO-OPs testified about the challenges they have faced to keep CO-OPs in business. These challenges included unpredictable enrollment numbers, management and leadership challenges, and inflexible standards imposed by CMS. The Committee is concerned that the remaining 11 CO-OPs are facing similar circumstances and may not survive when federal loan money runs out.

CMS has placed at least eight of the remaining 11 CO-OPs on "Enhanced Oversight" or "Corrective Action" Plans. These additional oversight plans were intended to assist CO-OPs that are struggling financially and/or may not be able to repay their federal loans. After reviewing these oversight plans, the Committee is concerned that CMS has not taken the appropriate steps to ensure that the remaining CO-OPs will be financially solvent for the remainder of the year. Federal taxpayers have invested over $1 billion into the remaining 11 CO-OPs. Especially considering this substantial taxpayer investment, the Committee wants to ensure CMS is taking the necessary and appropriate steps to keep these CO-OPs afloat.

To assist with our oversight of the CO-OP program, please provide the following documents and information by **May 30, 2016:**

1. Provide a copy of Oregon's Health CO-OP's loan application, and any additional applications or requests for additional funding.

2. Provide a list of all the loans awarded from CMS, including the date the loan was awarded and the amount of the loan.

3. Explain what CMS has communicated to Oregon's Health CO-OP regarding the following issues, from July 2015 to the present:

    a. Altering the Risk Adjustment Formula;

    b. Reconsidering limits on outside investors or capital; and

    c. Allowing CO-OPs to cap enrollment.

4. What administrative or regulatory changes could CMS make to better improve Oregon's Health CO-OP's ability to succeed? Please explain.

    a. Have you made these suggestions to CMS? If so, has CMS made any of these changes?

5. When did Oregon's Health CO-OP learn that risk corridor payments would be 12.6 percent of the requested amount? Did Oregon's Health CO-OP employees, agents, or

[4] 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).

contractors have any indication from CMS or HHS that payments would be lower than requested?

6. Did Oregon's Health CO-OP have any communications with CMS regarding payments through the Transitional Reinsurance program? If yes, please explain the nature of any communications, including any discussion of the issue of prioritizing payments to insurers over the U.S. Treasury, and any discussion of CMS making early reinsurance payments.

7. Provide copies of all Corrective Action Plans and/or Enhanced Oversight Plans created at CMS' request.

8. What month and year will Oregon's Health CO-OP begin to repay its loans to CMS? Please explain the repayment plan.

9. Did Oregon's Health CO-OP have any communications with CMS regarding the possible or potential closing of Oregon's Health CO-OP? If so, please describe these communications.

10. Describe the methodology Oregon's Health CO-OP used when analyzing its financial condition, and ability to repay CO-OP loans. Specifically, how did the CO-OP measure adequacy of capital and quality of its assets?

    a. Did Oregon's Health CO-OP's asset determination include uncertain payments, such as payments from the ACA Risk Corridor?

    b. What percentage of capital derived from the actual CO-OP start-up loan?

11. What was the composition of the enrollee's health risk score upon enrollment? After being awarded a CO-OP loan, did anyone at Oregon's Health CO-OP identify potential challenges/issues regarding underperforming or having difficulty meeting program milestones that were initially proposed to CMS in the loan application? If so, were these concerns expressed to CMS?

    a. If yes, who was made aware of these concerns at CMS?

12. Did anyone within Oregon's Health CO-OP identify challenges with (1) meeting quality and performance standards as expressed in the loan agreement, (2) financial conditions of the CO-OP which could hinder the CO-OP's ability to repay the loan, or (3) Third Party Administrators, *before* CMS asked your company to provide a Corrective Action Plan?

    a. If yes, were these concerns reported to anyone at CMS? If so, who at CMS, or what division within CMS received these notifications about concerns and problems? What was reported?

13. Did CMS ever provide technical assistance with improving the performance of the CO-OP or discuss the CO-OP's current financial status or ability for loan repayment?

    a. If so, when did these discussions occur? Before or after being asked to provide a Corrective Action Plan?

14. Did Oregon's Health CO-OP provide CMS with financial reports, enrollment data, governance and election information, annual independently audited financial statements, or other reports at any point after being awarded into the CO-OP program?

    a. If so, when? How frequently were such reports provided?

    b. Was Oregon's Health CO-OP asked to provide these reports from CMS, or did your company provide these voluntarily?

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, Jessica Donlon, or Brittany Havens with the majority committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Joseph R. Pitts
Chairman
Subcommittee on Health

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

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

The Honorable Gene Green, Ranking Member
Subcommittee on Health

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

Attachment