

Congress of the United States
Washington, DC 20515

May 9, 2012

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

We write to express our concerns about the Department of Health and Human Services' ("HHS") implementation of the \$3.8 billion Consumer Operated and Oriented Plans (CO-OP) loan program, which gives loans to help create nonprofit health insurance issuers. Based on the HHS efforts to date, there appears to be little evidence that the CO-OP program will promote greater competition and lower costs in most state insurance markets. In addition, it also appears that HHS may be significantly underestimating the financial risk that these new entities pose to the Federal Treasury.

The drafters of the health care law created the CO-OP program, purporting to establish a consumer-governed, private, nonprofit health insurance issuer in each state, which will sell primarily to individuals and small businesses. Loans are to be repaid over the next 5 to 15 years, at interest rates one to two percent below Treasury rates. Since February, eleven non-profits operating in ten states have been awarded \$845 million to establish CO-OPs.

Another doubtful claim is that CO-OPs would increase competition in states where large insurers often dominate the market, reducing choices and driving up costs for consumers. The new health care law is unfortunately already exacerbating this problem, by encouraging significant consolidation in many state insurance markets, with many small and mid-sized insurers either exiting those markets or being purchased by their larger competitors. As a result, many individuals and small businesses are confronting the reality of fewer choices and higher costs when purchasing health insurance.

Recent reports have highlighted the challenges facing CO-OPs, which strongly suggests that they will fail to provide consumers with viable alternative choices or reduce their costs. In an October 2011 report, the Urban Institute, a nonpartisan policy research organization, identified a number of major challenges to CO-OPs, including (a) difficulty in quickly building a provider network that allows the CO-OP to offer competitive pricing; (b) problems attracting enough enrollees in a short period of time; and (c) concerns with overcoming the risk of adverse selection (i.e. that many of the people looking to buy insurance may have a backlog of unmet medical needs). As Kaiser Health News also reported in February, "[Experts] warn of the difficulties of recruiting experienced insurance executives and of quickly signing up a large enough and healthy enough membership to make the plans financially viable. Given these challenges, it is not surprising that the Congressional Budget Office reported that CO-OPs "seem unlikely to establish a significant market presence in many areas of the country"

Initial assessments of the CO-OP program also indicated that there is a significant risk that participating entities will default on their loans. In July of last year, HHS itself estimated that 35-40 percent of all of the loans made under the CO-OP program will end in default. Thus, the Administration has already acknowledged at least \$1 billion of these loans may not be repaid. HHS' failure to address the structural challenges facing CO-OPs causes us to be concerned that the actual default rate on these loans could be even higher.

To help us assess both the measures HHS has established to protect taxpayer funds and the process by which you have awarded the CO-OP loans, we request that you respond to the following document and information requests by May 23:

1. Please explain your application review process, including a description of who looks at each application, who ultimately decides whether to award or deny a loan, and who decides how much is given, as well as the training and skills required for each position making those decisions. Please also include a description of what criteria is used to determine whether a loan is awarded or denied.
2. Provide complete applications for each loan recipient and any analyses or memoranda supporting such awards.
3. Please provide a copy of the signed agreements between HHS and the CO-OPs and all terms and conditions of the loans and/or grants to the CO-OPs.
4. For each loan recipient to date, list the amounts awarded for start-up costs and the amounts awarded for state solvency reserves. Explain how you determined the amount of each loan and include any supporting documentation.
5. Provide a list of loan applicants that have been denied. Provide complete applications for each denial and any analyses or memoranda supporting such denial.
6. Please describe the outreach HHS or its contractors have undertaken to-date to advertise and develop the CO-OP program. Please provide a list of third parties the Department has met with regarding the CO-OP program and the dates and times of meetings, including conferences at which the program was discussed and a list of the known participants at those conferences.
7. Provide any studies, reports, and analyses discussing the potential default rate of the loans, excluding information already provided in the preambles to the final and proposed rules. Please explain why the proposed rule includes an estimated 35-40% default rate on the loans, but the final rule "assumes full and timely repayment."
8. Provide any market analysis conducted or received regarding the impact of CO-OPs in state markets in general or in particular state markets.
9. Do you still plan to have a CO-OP in each state? If not, have you chosen to concentrate loan funds in the states most in need of competition in the insurance market? How did you decide which states most needed competition?

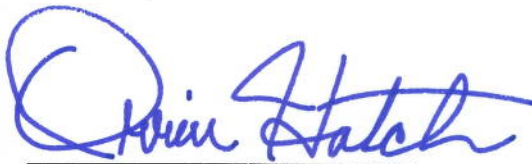
10. One national consulting firm has publicly stated that it has helped 30 separate entities develop CO-OP proposals. Have entities other than the loan applicants themselves, including consultants and lobbyists, interacted with HHS in any way on behalf of applicants? Has HHS provided funding to these consultants or other parties to help CO-OPs develop their proposals? With regard to loan applicants, please provide a list of third party representatives (such as consultants and lobbyists) that the Department has met with, the dates and times of those meetings and all correspondence from or to third party representatives.
11. To the extent that consultants or lobbyists are assisting entities in developing their proposals to HHS, is HHS aware of whether the consultants and lobbyists have contingent fee arrangements or if the CO-OPs are receiving funding from other sources to pay consultants and lobbyists to develop and promote their proposals to HHS? Has HHS ensured in the loan and grant agreements that CO-OPs will not use government loans or grants intended for the benefit of insurance cooperatives to reimburse consultants or lobbyists?
12. What general experience does HHS have in awarding loans and managing risk in loan portfolios? What is your rate of return and default on such loans?
13. Please describe in detail the "strict monitoring, audits, and reporting requirements" loan recipients will be subject to as per the final rule. How will each entity be monitored? How often will they be subject to audits and by what process? Will you be using an outside entity to conduct these audits or perform them internally? What qualifications are going to be required of those auditors? What reporting requirements are in place? What other policies are in place to ensure oversight of the program?
14. Please provide all emails, studies, reports, and analyses discussing the CO-OP program from January 20, 2009 to March 23, 2010.

We look forward to receiving your response. Please contact Stacy Cline at (202) 224-6770 or Kim Brandt at (202) 224-4515 if you have any questions, and to arrange for production of the documents.

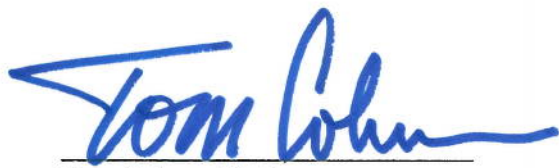
Sincerely,



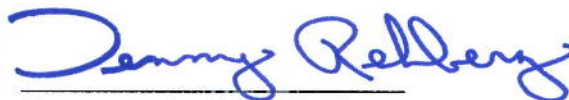
Senator Michael B. Enzi
Ranking Member
Health, Education, Labor, and Pensions
Committee



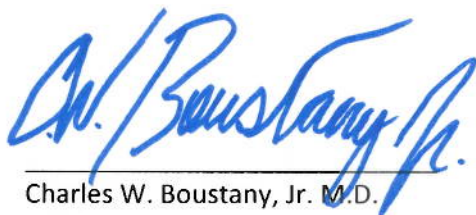
Senator Orrin Hatch
Ranking Member
Finance Committee



Tom Coburn, M.D.
U.S. Senator



Representative Denny Rehberg
Chairman, Labor, Health and Human Services,
And Education Subcommittee
Appropriations Committee



Charles W. Boustany, Jr. M.D.
U.S. Representative