# United States Senate

WASHINGTON, DC 20510

November 02, 2015

**VIA ELECTRONIC TRANSMISSION**

The Honorable Andrew M. Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Mr. Slavitt,

We have written to you and your predecessor regarding the many problems with the Health Insurance Marketplace. We remain concerned with the Centers for Medicare & Medicaid Services' (CMS) oversight of the Marketplace. On July 30, 2015, the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) raised concerns about the financial viability of Consumer Operated and Oriented Plans (CO-OPs). Over the past few months, several CO-OPs have announced that they will cease operations. We write to express our concerns with the CO-OP program and to seek additional information regarding CO-OPs, the OIG report, and the actions CMS is taking to ensure taxpayer funds are protected.

Section 1322 of the Affordable Care Act (ACA) established the CO-OP program, and these non-profit, consumer-run health plans were intended to improve coverage, increase competition, and provide more affordable options. The CO-OPs are not living up to these expectations. To date, eleven ACA CO-OPs—in Arizona, Colorado, Iowa, Kentucky, Louisiana, New York, Nevada, Tennessee, Oregon, South Carolina and Utah —have collapsed. As a result, hundreds of thousands of Americans will lose their health insurance plans and will have to scramble to find new plans, most likely with higher premiums and deductibles. There are indications that additional CO-OPs will close before the end of the year bringing even greater uncertainty to the nearly 870,000 individuals enrolled in CO-OPs nationwide. In fact, New York's CO-OP announced on Friday that it would be closing on November 30, 2015, a month ahead of its scheduled closure because of insufficient funds to continue operating.

In the OIG's July 30 report, it noted that many CO-OPs are in serious financial trouble.[1] The OIG found that from January 1 through December 31, 2014, 21 of the 23 existing CO-OPs incurred net losses and over half of the 23 CO-OPs had net losses of at least $15 million.[2] One CO-OP had a net loss of more than $50 million in 2014 alone.[3] In early October that CO-OP, Kentucky Health Cooperative, announced that it would close. Additionally, media reports have stated that CMS sent warning letters to 11 CO-OPs requiring them to take corrective action underscores the scope of the problem with this program.[4] Earlier this year, the credit ratings firm Standard and Poor's (S&P) said that medical-loss ratios for several CO-OPs were "hopelessly high."[5] S&P noted that, as of September 30, 2014, 11 CO-OPs had net loss-to-surplus ratios that were worse than the now-closed CoOportunity Health's.

We are concerned that the remaining CO-OPs continue to struggle with viability issues. According to the OIG report, most of the 23 CO-OPs reviewed had not met their initial enrollment and profitability projections. Additionally, most of the CO-OPs had net losses higher than their initial projections.

Over $2.4 billion in federal startup and solvency loans has been paid to CO-OPs. The massive failures of so many CO-OPs raise concerns about an ACA program that was designed to increase competition. The OIG report, and the closing of eleven CO-OPs, confirm many of our longstanding concerns about CO-OPs' ability to repay federal loans. Our concern deepened when we became aware of the guidance CMS issued to the CO-OP project officers within CMS on July 9, 2015.[6] In that guidance CMS indicated that it will allow CO-OPs to request that surplus notes be applied to CO-OP program start-up loans. It further states that "applying surplus notes to the startup loans will enable CO-OP borrowers to record those loans as assets in financial filings with regulators."[7] This raises a number of questions about whether CMS is allowing creative accounting to occur to enable the CO-OPs to appear more profitable than they actually are and if that false positive will then result in even more failures.

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[1] Department of Health and Human Services Office of Inspector General, Actual Enrollment And Profitability Was Lower Than Projections Made By The Consumer Operated And Oriented Plans And Might Affect Their Ability To Repay Loans Provided Under The Affordable Care Act (July 30, 2015).

[2] *Id.*

[3] *Id.*

[4] Amy Goldstein, Financial health shaky at many Obamacare insurance CO-OPs (Oct. 10, 2015), Washington Post.

[5] Bob Herman, Co-op insurance plan finances should be watched closely, Modern Healthcare (Feb. 14, 2015).

[6] Centers for Medicare & Medicaid Services memo dated July 9, 2015, to CO-OP Project Officers from Kelly O'Brien, CO-OP Division Director, regarding "Amending CO-OP Loans Agreement to Apply Surplus Notes to Start-up Loans."

[7] *Id.*

Finally, with the failure of eleven CO-OPs and potentially more to come, we note that it is imperative that consumers be given as timely of information as possible about what plan options are available to them. This is difficult when as of the date of this letter all eleven of the CO-OPs that have indicated they are ceasing operations are all still listed as viable plan options for the 2016 enrollment period.

Accordingly, we request the following:

1. The OIG recommended that CMS provide guidance or establish criteria to determine when a CO-OP is no longer viable or sustainable. CMS concurred and stated that it was in the process of establishing enhanced criteria and processes regarding financial viability and sustainability. Please describe the criteria and processes that CMS has established. If CMS has not yet established such criteria and processes, please provide a timeline by which it will do so.

2. The OIG recommended that CMS pursue available remedies for recovery of funds from terminated CO-OPs, in accordance with the loan agreement. Has CMS pursued any remedies for the recovery of funds from terminated CO-OPs? If not, what steps will CMS take to recoup losses from CO-OPs that appear unlikely to repay their loans?

3. In the instances of those CO-OPs who are planning to cease operations, who will be responsible for loan repayment once they cease operations?

4. What steps is CMS and/or the Office of Personnel Management taking to ensure that the plan options listed on the Federal marketplace are up to date and that consumers have sufficient choice? With respect to Utah, now that the CO-OP in Utah will be closing down, that means that in 20 of the state's 29 counties, consumers will have only one choice when the open season begins.

5. Please provide all information related to the process by which CMS conducts oversight of the CO-OP program, including: 1) the process used to determine the approval and allocation of CO-OP loan and solvency grants funds, 2) any correlation between the amount of solvency loans awarded and a CO-OPs total enrollment, and 3) the results of any audits conducted of the various CO-OPs or the program as a whole.

6. Please describe CMS's interaction with state insurance regulators in identifying CO-OPs performance issues, including but not limited to performance issues that have led to additional oversight measures. Identify which CO-OPs have been subjected to additional oversight measures due to this interaction.

7. Please provide all enhanced oversight or corrective action plans CMS has placed on CO-OPs, and describe the criteria by which CO-OPs are subjected to increased oversight. The Healthcare.gov "window shopping" site is out of date and shows consumers incorrect information, even listing CO-OPs that are no longer in existence. What CMS official is

responsible for updating the site, and why does CMS continue to provide consumers with false information?

Please number your responses according to their corresponding questions. Please respond no later than November 30, 2015. Thank you for your cooperation in this important matter.

Sincerely,

Orrin G. Hatch
Chairman
Committee on Finance

Lamar Alexander
Chairman
Committee on Health, Education, Labor, and Pensions