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Committee on Energy and Commerce:

Subcommittee on Oversight and Investigations

"Examining the Costly Failures of ObamaCare's CO-OP Insurance Loans."

Testimony of:

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Good morning Chairman Murphy, Ranking Member DeGette, and members of the Subcommittee. I am Gloria Jarmon, Deputy Inspector General for Audit Services for the Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS). I appreciate the opportunity to appear before you today to discuss OIG's work as it relates to the Centers for Medicare & Medicaid Services' (CMS) oversight of financial loans and the financial solvency of the Consumer Operated and Oriented Plans (CO-OP).

The Patient Protection and Affordable Care Act (ACA) established health insurance exchanges (commonly referred to as "marketplaces") to allow individuals and small businesses to shop for health insurance in all 50 States and the District of Columbia. The ACA established the CO-OP program to foster the creation of qualified nonprofit health insurance issuers to offer qualified health plans in the individual and small group markets. The ACA authorized the Secretary of HHS to provide loans to help establish new consumer-governed, nonprofit health insurance issuers, referred to as CO-OPs.

As part of our strategic plan to oversee implementation of ACA programs, OIG has performed three reviews related to CO-OPs. My testimony today will focus on OIG's most recent report issued in July 2015, which found that most CO-OPs had lower-than-expected enrollment numbers and significant net losses and that these financial concerns might limit some CO-OPs' ability to repay loans. We made recommendations to CMS to improve the agency's oversight of the loans and of the financial solvency of the CO-OPs.[1]

This most recent report builds on findings and recommendations that OIG made in two prior reports issued in July 2013.[2] Those reports examined CMS's selection process for CO-OPs and the early implementation of CO-OPs. Based on that work, we concluded that CMS awarded CO-OP loans in accordance with applicable Federal requirements, but we also identified several risks that indicated a critical need for additional CMS oversight of the CO-OPs as they prepared to become operational. For instance, we identified a risk that CO-OPs could exhaust all startup loan funding before they became fully operational or before they earned sufficient operating income to be self-supporting.

[1] *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.* (http://www.oig.hhs.gov/oas/reports/region5/51400055.pdf)
[2] *Early Implementation of the Consumer Operated and Oriented Plan Loan Program* (http://oig.hhs.gov/oei/reports/oei-01-12-00290.pdf) *and The Centers for Medicare & Medicaid Services Awarded Consumer Operated and Oriented Plan Program Loans in Accordance with Federal Requirements, and Continued Oversight is Needed*. (http://www.oig.hhs.gov/oas/reports/region5/51200043.pdf)

We reviewed the status of the 23 CO-OPs as of December 31, 2014. The objective of this review was to determine whether enrollment and profitability met the CO-OPs' projections on their initial loan applications.

OIG found that most of the 23 CO-OPs reviewed had not met their initial program enrollment and profitability projections as of December 31, 2014. Each CO-OP submitted a loan application that included details on its annual projected number of enrolled members and projected net income. Specifically, member enrollment for 13 of the 23 CO-OPs that provided health insurance in 2014 was considerably lower than the CO-OPs' initial annual projections, and 21 of the 23 CO-OPs had incurred net losses as of December 31, 2014.

By the end of our audit field work, 19 of the 23 CO-OPs had exceeded their 2014 calendar year projected losses as reported in the loan award application feasibility studies. CMS had placed four CO-OPs on enhanced oversight or corrective action plans (Kentucky, Louisiana, New Jersey, and Tennessee) and two CO-OPs under low-enrollment-warning notifications (Massachusetts and Oregon).

Based on these findings, OIG issued four recommendations to CMS in order to improve financial oversight and solvency of the CO-OPs. These recommendations include: (1) continuing to place underperforming CO-OPs on enhanced oversight or corrective action plans, (2) working closely with State insurance regulators to identify and correct underperforming CO-Ops, (3) providing guidance or establishing criteria to determine when a CO-OP is no longer viable or sustainable, and (4) pursuing available remedies for recovery of funds from terminated CO-OPs.[3]

Having examined the CO-OPs at different points throughout their implementation and operation, OIG believes that our four recommendations can help CMS provide further oversight and accountability for underperforming CO-OPs. In accordance with the CMS Funding Opportunity Announcement[4] dated December 9, 2011, and loan agreements, CMS should place underperforming CO-OPs on enhanced oversight plans. This would enable CMS to conduct thorough and more frequent reviews of a CO-OP's operations and financial status.

In addition, CMS can provide technical assistance if it were determined that doing so would improve the performance of the CO-OP and increase the likelihood of loan repayments.[5] Finally, if CMS no longer believes that the CO-OP is viable and sustainable and able to serve the interests of its community, CMS should pursue all available remedies for recovery of funds from CO-OPs. This would include the option to terminate loan agreements, which would require the CO-OP to forfeit all unused loan funds. This may allow CMS to recover some portion of the loan, with the recognition that a CO-OP must resolve any outstanding debts or other claim obligations before repaying the loan funds to CMS.[6]

[3] In response to OIG's July 2015 report recommendations, CMS concurred with all four and noted that it has taken steps to further oversee CO-OP compliance by requiring external audits, site visits, and additional financial reporting.
[4] Loan Funding Opportunity Number OO-COO-11-001 was released July 28, 2011, and revised effective December 9, 2011.
[5] Sections 11 and 12 of the CO-OP loan agreement.

[6] Sections 4.4, 5.6, and 16.3 of the CO-OP loan agreement.

To ensure that CMS can appropriately identify CO-OPs that pose a high risk of failure, CMS should establish guidance or criteria to assess whether a CO-OP is viable or sustainable. In our July 2015 report, we found that low enrollments and net losses could limit the ability of some CO-OPs to repay startup and solvency loans and to remain viable and sustainable. Given the growing concerns about the financial viability of CO-OPs, it is critical that CMS provide the necessary guidance to improve program oversight and protect taxpayer dollars from significant losses.

Beyond enhancing its oversight with the tools available under the CO-OP loan agreement, CMS should also work closely with State insurance regulators who are the primary regulatory entities that oversee CO-OPs as health insurance issuers. This recommendation is important because it would allow CMS to obtain timely insights as to the CO-OPs' performance so that CMS can work with CO-OPs to address and fix ongoing financial and operational problems earlier. Financial concerns identified by State Insurance officials in Iowa and Tennessee led to significant actions to liquidate the operations of the Iowa/Nebraska and Tennessee CO-OPs. However, CMS did not terminate the Iowa/Nebraska CO-OP loan agreement until after the Iowa State Insurance Commissioner took control of the CO-OP because of financial concerns.

CONCLUSION

We appreciate the Subcommittee's interest in this important issue. We continue to urge CMS to fully address OIG's recommendations related to improving oversight and financial solvency within the CO-OP program.

OIG is committed to continued oversight of this program. Our ongoing work will assess whether CO-OPs were in compliance with Federal regulations and program requirements in managing Federal funds. In addition, OIG will reassess the CO-OPs' financial status to determine if any improvements were made in 2015 and identify actions CMS has taken to effectively oversee the loan program and monitor underperforming CO-OPs. We anticipate issuing these reports in 2016, and we look forward to sharing those results with the Committee at that time. This concludes my testimony. I would be happy to answer your questions. Thank you.