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Consumer Operated and Orientated Plan (CO-OP) Program

The Affordable Care Act (ACA) created the Consumer Operated and Orientated Plan (CO-OP) program, which provides federal loans to encourage the development of consumer-directed, private, nonprofit health insurance issuers. The goal of the program was to create a CO-OP in every state in order to expand health coverage options offered through the health insurance Exchanges.

On Dec. 13, 2011, the Department of Health and Human Services (HHS) issued **final regulations** to implement the CO-OP program. The final regulations, effective Feb. 13, 2012, contain eligibility rules for the CO-OP program, establish loan terms and provide governance standards for CO-OPs.

CURRENT STATUS OVERVIEW

The CO-OP program received $3.8 billion in funding to support loans. However, on Jan. 2, 2013, Congress enacted the American Taxpayer Relief Act of 2012 (ATRA) as part of the fiscal cliff resolution, which:

- **Cut 90 percent** of the unobligated CO-OP program loan funding; and
- Transferred the remaining 10 percent of the unobligated funding to a new **CO-OP contingency fund** that provides assistance and oversight to CO-OP loan recipients that have already received a loan or grant award.

As a result of the ATRA, HHS no longer has the authority to make loan awards to new borrowers or enter into loan agreements with new borrowers. On April 4, 2013, HHS released a set of **questions and answers** explaining how the ATRA affects the CO-OP program contingency fund and its loan applicants and recipients.

CO-OP PROGRAM ELIGIBILITY RULES

To apply for a loan under the CO-OP program, a group must have formed a nonprofit, not-for-profit or public benefit member organization that is organized under state law and intends to become a CO-OP. An organization was *ineligible* for a CO-OP loan if:

- The organization, a related entity or a predecessor of either, was licensed as an insurance issuer under state law on July 16, 2009 (a pre-existing issuer);
- The organization is sponsored by a state or local government;
- The organization is sponsored by a pre-existing issuer, a holding company that controls a pre-existing issuer or a foundation established by a pre-existing issuer; or
- The organization receives 25 percent or more of its total funding (excluding any loans received from the CO-OP Program) from pre-existing issuers and their agents.

A CO-OP sponsor or applicant may have received grants and other funding from a state or local government as long as the CO-OP (or its sponsor) is not controlled by a governmental entity and does not receive more than 40 percent of its total funding from a state or local government.

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CO-OP PROGRAM LOANS

The CO-OP program received $3.8 billion in funding to support loans. Due to the ATRA funding cuts, **HHS no longer has the authority to award loans to new borrowers**. However, the ATRA does not rescind funding from existing CO-OP loan recipients. In addition, HHS has the authority to provide additional funding to existing borrowers, including funds for expansions to new states.

Types of Loans

Applicants that met the program's eligibility rules received either start-up loans or solvency loans.

- **Start-up loans** provide funding to assist with the start-up costs associated with developing a CO-OP. They must be repaid within five years.
- **Solvency loans** provide funding to help loan recipients meet state solvency and reserve requirements. They must be repaid within 15 years.

The interest rates on both types of loans are tied to the average interest rate on marketable Treasury securities.

Loan Program Protections

The CO-OP program contains provisions to protect against fraud, waste and abuse. Loan recipients are subject to monitoring, audits and reporting requirements for the length of the loan period plus 10 years. Recipients must also submit semi-annual program reports and quarterly financial statements to HHS. Additionally, HHS may conduct audits, including site visits.

The final regulations also establish penalties for loan recipients that fail to adhere to the CO-OP program's requirements. Loan recipients that do not comply with the program's rules or terms of the loan agreement, or that engage in criminal or fraudulent activities, must repay 110 percent of the aggregate amount of loans received under the CO-OP program plus interest.

STATUS OF THE LOAN PROGRAM

The first round of loan applications for the CO-OP program was due by Oct. 17, 2011 and the last round of applications was due by Dec. 31, 2012. According to HHS, it received CO-OP program applications from a broad array of organizations in states across the country. They include small business coalitions, physician and hospital providers and associations, agricultural organizations, unions and community-based sponsors.

Twenty-four private, nonprofit entities have been awarded loans to establish CO-OPs across 24 states. Each of the 24 CO-OP awardees has undergone a thorough application review process and extensive loan negotiations. Loans have been made only to entities demonstrating a high probability of financial viability.

Impact of ATRA

Due to the ATRA funding cuts, HHS no longer has the authority to make loan awards to new borrowers. This applies to both **new applications** and **applications received but not awarded** during earlier application rounds, including CO-OP applicants who:

- Were in active negotiations with HHS to complete a CO-OP loan agreement;
- Submitted a request for reconsideration of a previous application; or
- Were given the option to reapply.

However, the ATRA does not rescind funding from the 24 existing CO-OP loan recipients and HHS will continue to disburse funds to CO-OPs as they reach milestones outlined in the loan agreements. Because these funds are

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considered to be "obligated" when the awards are made, loan or grant awards issued to CO-OPs prior to the ATRA's enactment are not subject to or affected by the cuts in funding.

HHS will continue to provide assistance and oversight to these CO-OPs as they work to achieve program milestones, receive licensure from their respective state Departments of Insurance (DOIs), qualify as a qualified health plan (QHP) and prepare to participate in the new Exchanges. Under the ACA, administrative costs related to CO-OPs are also supported by the CO-OP fund.

Further, HHS has the authority under the ATRA to provide additional funding to existing borrowers, including funds for expansions to new states. This assistance may include additional loan funds, as needed, to:

- Cover costs of specific systems, contracts or work not anticipated during loan closing; or
- Extend operations to a new state conditioned on approval of a separate request specifically for that proposed expansion.

Solvency loans will continue to be available to CO-OPs to complete the state licensure process and to support the regulatory capital of the CO-OPs as they begin providing health insurance coverage.

The assessment process for additional funding is rigorous. The available program funds will be prioritized first to ensure the viability of the existing business plans, and secondly to fund modifications to business plans for the purpose of expanding to new states. Expansion requests will be reviewed against the same scoring criteria as were the original loan applications. Preference will be given to expansions that align with the program goal of increasing consumer choice in states that may otherwise face limited issuer competition in their Exchange.

CO-OP GOVERNANCE STANDARDS

The final regulations contain governance standards for CO-OPs to encourage member control of the organization. Under these standards, a CO-OP must be governed by a board elected by a majority vote of a quorum of the CO-OPs members who are age 18 or older. The majority of the voting directors on the board must also be members of the CO-OP. Representatives of federal, state or local governments are not eligible to serve on the board of directors.

Each director must meet ethical, conflict-of-interest and disclosure standards, including that each director must act in the sole interest of the CO-OP and, as appropriate, the health and wellbeing of its local geographic community. The CO-OP must have governing documents that incorporate ethics, conflict of interest and disclosure standards. The standards must protect against insurance industry involvement and interference.

In addition, the CO-OP must operate with a strong consumer focus, including timeliness, responsiveness and accountability to members.

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