DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

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Title: Frequently Asked Questions on the Consumer Operated and Oriented Plan (CO-OP) Program

Q1. What does it mean that "substantially all" of a CO-OP's business be sales of QHPs? Can CO-OPs sell large group policies or participate in other health programs?

A1. The requirement that substantially all of a CO-OP's sales be QHPs ensures that the CO-OP program retains its focus on providing competitive, high-quality health plan choices to American consumers in the individual and small group markets. The regulation does not preclude CO-OPs from offering other products such as large group policies, Medicaid Managed Care products, Medicare Advantage products, or ancillary products such as dental or vision plans. The limitation on the array of policies issued only restricts the percentage of policies other than CO–OP QHPs offered in the individual and small group markets. Under our regulations, at least two-thirds of the policies or contracts for health insurance coverage issued by a CO–OP in each State must be QHPs.

Q2. When a CO-OP's loans are converted to a surplus note, what does that mean for repayment of the loan?

A2. Each CO-OP has two Federal loans: a start-up loan and a solvency loan. The solvency loans have always been treated as surplus notes in the sense that payment is not due to CMS until the State Department of Insurance determines repayment will not adversely impact the CO-OP. The start-up loans were all issued as general obligations to be repaid at a specific time. In 2015, CMS agreed to convert CO-OP start-up loans to surplus notes, on a case-by-case basis, if a CO-OP could demonstrate the need and benefit of a conversion. This conversion was designed to increase financial flexibility for CO-OPs and allow them to leverage private financial markets.

Under the terms of a surplus note, CO-OPs are not required to make any payments that could lead to distress or default. When a creditor accepts a surplus note, the debt becomes comprehensively subordinate, pursuant to National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41. Specifically, a surplus note renders a debt subordinate to claims of policyholders, beneficiary claims, and all other classes of creditors other than another surplus note. The debt cannot be repaid, and interest cannot accrue, without the prior written approval of the state insurance commissioner.

Q3. Is it true that a CO-OP will be considered to be in default if it has risk-based capital (RBC) below 500%? What are the implications if a CO-OP has an RBC below 500%?

A3. Under our regulations and guidance, a CO-OP that has an RBC below 500% is not automatically considered to be in default. [1]

Under the terms of the loan agreement, the RBC level that a CO-OP must maintain is specified in its business plan. For all CO-OPs this level is 500% RBC. Failure to maintain an RBC level that is within at least ten percent of this RBC level is a potential Event of Default under the loan agreement, subject to all terms and conditions thereof.

However, CMS evaluates CO-OPs that fall below 500% RBC on a case-by-case basis to determine whether the CO-OP should be placed on a Corrective Action Plan or notified that the drop in RBC constitutes an Event of Default, per the loan contract. Beyond the case-by-case review, there are no automatic actions that CMS initiates if a CO-OP has an RBC level below 500%, assuming the CO-OP remains solvent under state regulatory requirements and has no other substantial issues. We encourage CO-OPs to maintain an RBC level of 500% or higher, but a CO-OP with an RBC below that level may still be in good standing.

Providing a CO-OP with the flexibility to operate at an RBC level below 500% assists consumers by allowing a CO-OP to more easily manage changes in business operations. In addition, in most states, sufficient RBC levels are between 200% and 300%.

Q4. Can CMS waive or change the requirements for serving on a CO-OP board, which could help CO-OPs diversify board membership?

A4. Existing standards are described in 45 C.F.R. §156.515(b)(1). They require that all board members be elected by a majority vote of a quorum of the CO-OP membership and that a majority of voting directors be CO-OP members covered by policies issued by the CO-OP. The regulation also prohibits any representative of a pre-existing insurance company or state government from serving on the board of a CO-OP. CMS is exploring what changes could be made to help CO-OPs diversify their boards and grow and raise capital, while still preserving the fundamentally member-run nature of the CO-OP program.

[1] https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CO-OP-Guidance-Manual-7-29-15-final.pdf (Released December 9, 2015).