

Federal Advisory Board on CO-OP's

March 14, 2011

PRESENT ARE:

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MR. David Buck

MR. David Carlyle

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Rick Curtis

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Terry Gardiner

Mark Hall

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## P R O C E E D I N G S

MR. FEEZOR: I'll say this to Bill and both Barbara's, that is Barbara Yondorf, co-chair, and Barbara Smith and her team. I really do owe a great deal of thanks to Bill and Donna, and Mike and Barbara, for the work they did and the extra hours. And, thank you on behalf of the entire group.

Bill, talk to us about the remaining issues -- not the remaining issues, but the issues since February in the governance at work.

MR. OEMICHEN: Okay. Thank you, Mr. Chairman, and members of the committee. And, I think I'm a lot more awake than I was at the last committee meeting. And, who could believe that after the Green Bay Packers won the Super Bowl, that that euphoria would burn off after two-and-a-half weeks and move into all the protests at the state capital in Madison, which continue on. And, so, I actually appreciate the opportunity to be here, because it's a lot quieter than it is in my office across the street from the capital. Enough of that.

Moving on to the governance subcommittee,

everybody knows who the subcommittee members are, but I want to thank all of them. Like you did, Allen, to all the subcommittee chairs and all the subcommittee members, because of all the time that was spent on putting these documents together. And, I just want to point out that a common phrase that I hear is, "Don't let perfect be the enemy of good."

We may have not satisfied every issue, to the extent that everybody would like to see them, but I think overall what we have is a very, very good work product that hopefully will be of substantial assistance to the Department of Health and Human Services as they go about implementing Section 1332. So, let's get into -- and, Annie, do I have to point this towards you?

ANNIE: (Inaudible)

(Off Mike)

MR. OEMICHEN: Okay. Governance recommendations, these are consensus items that we received from the members of the Advisory Board. And, the first one -- and I'm working with a number of different pieces of paper here, so forgive me for that.

But, for slide two, with the top bullet, we made clear that a co-op can be formed from a -- by a variety of organizations, and then we included, "but not limited to, non-profit organizations, professional group practices, business entities."

And, we intended that list to be expansive. We didn't list every possible type of participant that could be in there. We just want to make clear that that was expansive, as long as what they were doing was consistent with the mission and intent of Section 1332 in the co-op provisions. And, in case you're trying to track that, that's page 10 -- or excuse me, page nine, number 10, and so, we, by consensus, we agreed to include that.

The next bullet is language regarding the eligible pre-July 16, 2009, issuers. There was -- as Advisory Board members will recall, there was a lot of discussion on that. That is page eight, number eight. But, we beefed that up to insure that those entities that could participate, as a pre-July 16, 2009, issuer, were those that had the requirements that are listed out in the text, but also those that had the mission of

covering under -- underserved and uninsured populations.

And, I think, Rick, you were the one that made that -- either Rick or Terry, I'm trying to remember now, made that recommendation, but we beefed that up and that was a consensus recommendation as well, of the subcommittee, and neither Rick nor Terry seems to remember which one it was.

MR. CURTIS: I was wondering where it came from.

MR. OEMICHEN: Okay. Well then, it must be Terry. I remember modifying it. Okay. Recommendations are required. Further discussion on the next page, slide three, and that comes from page 10 of the report on the governance recommendations on page 24 of the report under Appendix A, and this is regarding conversion.

And, what we had as general language in the Advisory Board was exactly that, general language regarding conversion, and it was suggested by a member of the Advisory Board that we get much more specific. We had intended to get more specific, but we ran out of

time trying to get to all that specific language, given all the other issues that we had to deal with.

So, we've included a fair amount of additional language in the text, both of the recommendation -- the text of the recommendations, as well as the appendix, that list out the various requirements for a conversion. And, there was one comment earlier today about saying, "Apply the same restrictions that you apply to board members on unjust enrichment, basically, to management."

At one point, we had management in there. I'm not sure why that word fell out, but we'll make sure that we put that word back into the report. Moving on to the next one, it's slide two of four.

MR. FEEZOR: Bill -- Bill, before you leave that.

MR. OEMICHEN: Yes.

MR. FEEZOR: My recollection -- the discussions on management in and out, that there might be some reasons why management might want to continue in the operation --

(Crosstalk)

MR. OEMICHEN: That's --

MR. FEEZOR: -- but not to --

(Crosstalk)

MR. OEMICHEN: -- be unjustly enriched.

MR. FEEZOR: -- get the inurement.

MR. OEMICHEN: Right, exactly.

UNIDENTIFIED MAN: Yeah.

MR. OEMICHEN: Yeah. We're not barring management necessarily, that I recall, but what we're saying is there can't be an unjust enrichment from the conversion from basically, a previous entity, the new entity.

MR. HALL: Well --

MR. OEMICHEN: Mark?

MR. HALL: Yeah, I read that carefully myself and noted the difference between board members getting anything of benefit, which might influence their vote, versus management, which might be essential to the ongoing -- you know, value -- the business remaining a viable ongoing entity. And, so, I wouldn't just so easily stick management in there along with board membership.

MR. OEMICHEN: Well, again, it's to the concept of no unjust enrichment. One example is provided on a conversion of a Blue Cross -- non-profit Blue Cross/Blue Shield, where management received \$15 million upon the conversion. We want to make sure that type of activity doesn't occur. So, it relates more to the unjust enrichment of management, from the conversion from the prior entity to the new entity. It's not a bar in carrying over management necessarily, just making sure they don't receive unjust enrichment. Terry?

MR. GARDINER: Yeah. I guess at this stage what we're going through --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. GARDINER: -- as far as -- note -- note anything. Okay. I would note the issues brought up in testimony about how these provisions, which I think are great. Going down this path, how does this relate to the case of a co-op failure?

MR. OEMICHEN: Okay. We will make that note. Okay. Back to slide 204, for recommendations that

require further discussion. Let's see -- oop -- let's see, we were actually just talking about that. And, as I said, we included additional language on the conversion. Note - insure no board or management enrichment.

As I said, we have it in the slide, but somehow it didn't make it into the text, and we'll make sure that that's taken care of. It went from 204 to 304. I guess we're on 404. Final proposed recommendation that require[s] further discussion: Was a non-profit insurer, who was an issuer prior to July 16, may dissolve. An eligible new co-op may be formed. But, in prior -- and we've talked about this -- the prior insurer's board directors are permanently barred from serving on the new co-op board.

We did not have that as a working group recommendation at the time, but upon further study, we felt that that was a meritorious provision to include in there, so there wasn't the carryover of the prior board to the new board. In essence, look like you really are the same entity. And, so, we went along with that as a recommendation and included that within

the text of the report, any questions on that?

And, I'm not sure why these got in slightly different order on the slides, but number 304, on the proposed recommendation, which we did not accept. Was 5(f) relationship provision that states, "An entity may carryover the management team and the assets of the former organization?"

We struggled, as a working group, of trying to figure out all the different possibilities that could occur, that would be considered abuse by some, at least. But, at least by the members of the working group that an entity was being dissolved and a new entity was being created, and what could be carried over in that case. And, essentially, what we decided to do is, we had a provision 5(f) that's listed there.

We decided to just delete that because we thought, and I think that was a comment by Barbara Yondorf, that that may cause more trouble than it really attempted to resolve. And, so, we went ahead and deleted that provision. We think the rest of the report speaks for itself. And, so, hopefully, that's clear to all the committee members, but we just thought

that that was language that was more problematic than it was helpful. So, as a working group, we decided to delete that.

MR. FEEZOR: Let's --

MR. OEMICHEN: Mr. Chairman?

MR. FEEZOR: Bill, I'd like to suggest, if you would. First, if there are questions of Bill, in terms of what changes have been made since last time, or in his presentation? And, then we'll move to, are there some issues that he presented, or that still remain in the written report. Say, I want to take a look at it in the afternoon session basically, and we'll sort-of what I call "bedding" the issues that we have to deal with this afternoon.

MR. OEMICHEN: And, Mr. Chairman, one final comment before we get there. There was some language that was included in our February 7 minutes, on the report on the subcommittee on governance, dealing with the applying entity., what could the applying entity be, who could own, and all that. That language was somehow, deleted and we just want to incorporate that back in the text and we will go forward and do that.

And, again, that was from minutes that had already been adopted.

MR. FEEZOR: Questions or discussions on Bill's presentation? David?

MR. BUCK: Just to note that I wanted to make, as far as what was said earlier in the public presentation, but around the -- the part in number 13. The Secretary's approval is required for conversion or sale. Since that's been identified as a concern, I would like to see that language this afternoon.

MR. FEEZOR: And, so, we would add that at the same time we talk about what I call, "forced conversion" or emergency actions.

MR. BUCK: Correct.

MR. FEEZOR: In the case of an eminent insolvency or something. Okay.

MR. FEEZOR: Further questions or comments?

(Off Mike)

MR. FEEZOR: Further questions or comments on the -- Mike?

MR. PRAMENKO: Yeah. I just want to make sure we're addressing the morning comment about exacts and

future employment. The language looks like they can't be on the Board. Does that -- and I might be naive here, does that preclude them being part of any other part of the management team, and if we've addressed that so that they can't get a very high paying job after a conversion. Is that addressed here even if it's not on the Board, per se?

MR. OEMICHEN: We attempted to make sure that there was no unjust enrichment of management that was carried over from the prior entity to the new entity. And, by that, we assumed management that didn't necessarily serve on the Board because we have separately taken care of board member unjust enrichment. What we're saying is that there could -- I think we've tried to bar the door as much as possible to that, and I'm not sure, Mike, I'm fully getting your question.

MR. PRAMENKO: No.

UNIDENTIFIED MAN: What I'm hearing is concern. I don't think we did think of and I don't think we did address. He's talking about a board member who's not a member of management in the

preceding organization who then might be --

MR. OEMICHEN: Oh, I see what you mean.

UNIDENTIFIED MAN: -- swayed to vote for --

MR. OEMICHEN: I see what you mean.

UNIDENTIFIED MAN: -- conversion because now they've got a high paying executive job, so ...

MR. OEMICHEN: We can note that for this afternoon too.

MR. FEEZOR: I don't think there's a doubt about what we're trying to do. It's a question whether we have it ordered correctly. At least I'm --

MR. OEMICHEN: Right.

MR. FEEZOR: -- as I look around, I'm seeing nodding heads.

MR. OEMICHEN: I think the intent is there. We just may not have had the language all exactly, correct.

MR. FEEZOR: Okay. Further discussions, questions of Bill, and then we'll move to bedding some issues within his presentation or that section. Issues for bedding? Bill, you're not getting off that easily.

MR. OEMICHEN: Oh, darn -- darn.

MR. FEEZOR: I -- this is a matter of concern if -- number eight, on page eight, I believe.

MR. OEMICHEN: Number eight?

MR. FEEZOR: Yeah, I think it is. Let me see on page eight. As I interpret that language, since we make specific reference to the departments of insurance, that, at least in my almost adopted State of California, there's the Department of Managed Health Care and a Department of Insurance. That would be setting up, I think, an awkward situation, and as I recall, there are a couple of other states. Like, I want to say Minnesota, Wisconsin, where sometimes the health plans were still under sort-of the Health Department and --

MR. OEMICHEN: Right. Minnesota. Minnesota's like that.

MR. FEEZOR: Yeah. And, so, I think we need to say what is our intent there.

MR. OEMICHEN: Okay.

MR. FEEZOR: Is it a state regulated entity as opposed to specifically, the Department of Insurance.

MR. OEMICHEN: Okay.

UNIDENTIFIED WOMAN: State regulated.

MR. OEMICHEN: Okay. We'll take care of that.

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

UNIDENTIFIED MAN: Any state department or  
(inaudible).

(Off Mike)

MR. FEEZOR: Yeah. But, it says, "Commission  
of Insurance for Department of Insurance," and some of  
them are really under the Departments of Health or the  
Departments of Managed Care.

UNIDENTIFIED MAN: Oh, well, I -- any state  
department --

MR. FEEZOR: Ah, I guess I read it as state  
department. Okay.

MR. OEMICHEN: Well, we were trying not to be  
too specific because of the concern that you raised  
there.

MR. FEEZOR: Yeah. Okay. I read it  
differently, but you're right. It could be read that  
way, so ...

UNIDENTIFIED MAN: Yeah. We should --

MR. FEEZOR: All right. Mark?

MR. HALL: Yeah. On things like that, it occurs to me that -- you know, we're giving recommendations to the Secretary that conveys a sense of things, and these are not sort-of governing -- you know, regulatory language. So, you know, I just sort-of, for the record, we'll say that as long as the intent is clear.

UNIDENTIFIED MAN: Right.

MR. HALL: Whether we've used exactly the precise wording that covers all situations, I think is hopefully, not our task today.

MR. FEEZOR: Other -- go ahead, Bill.

MR. OEMICHEN: I was going to be -- I was just going to say there were three really, bright people on the working group and me. And me, separate from those three really bright people, but we tried to anticipate all those language changes and I agree with Mark that we just have to hope that the Secretary uses some discretion when they review this, because we couldn't anticipate everything, as much as we tried.

MR. CARLYLE: Dave Carlyle has a question

when it's appropriate.

MR. FEEZOR: Absolutely, Dave. Good morning.

MR. CARLYLE: Good morning. My question, on page 10, number 13 -- you know, (a) and -- you know, it's very specific language, and I just want to make sure, when it talks about the interest rate being market rate plus five percent, was that -- was that computation based on some standard formula other people uses (sic) for similar type processes? I'm just trying to get a -- I want to make sure I knew what the origin of that language came from.

MR. OEMICHEN: Good question. Terry, if I can throw that over to you since you suggested that language.

MR. GARDINER: No, there was a -- it's not necessarily taken for something, but just that -- you know, under the -- it was just the general thought that -- you know, the taxpayers -- you know, were using taxpayer's dollars for a public purpose of getting these started. It's -- and taxpayer's dollars are not being used with the hope that somebody else will be

enriched down the track.

So, how do we create what, in the private sector -- you know, people would call "poison pill," or something, but -- you know, and so -- you know, it was just -- so, there's no magic to the five percent? And, maybe somebody could read mine just on -- you know, how the interest rate would actually -- of the loans and grants -- would actually be calculated.

MR. FEEZOR: Terry, I'm going to bail you out a little bit on this. In some of the property and casualty insurance regulation where there is a prior authorization, at least in two entities that I know of. There is, in fact -- that if, in fact, the insurance companies want to go ahead and put the rates into effect, that are over and above what the Commissioner might have approved, they can do so.

But, if it's ever found in the final appeals process the Court says, "No, the Commissioner was right, you guys weren't." It is basically, prime plus three or plus two. I forget what it is in a couple of those states. So, there is a way of sort-of simply saying that if you're going to do this, you have -- it

has to be worth the effort because you've -- sort-of  
contra to being what's the public purpose. And, I  
think that's maybe not a charitable way of presenting  
it, but I think there is some precedent for that.

MR. OEMICHEN: But, that's what we were  
attempting to hope --

MR. FEEZOR: Yeah.

MR. OEMICHEN: -- we were attempting to  
accomplish, Mr. Chair.

MR. FEEZOR: David Carlyle, did you have a  
follow-up question on that?

MR. CARLYLE: My only statement is that -- you  
know I support the concept completely. I just want to  
make sure I had a sense for the underlying thought, and  
you gave that to me. Thank you.

MR. OEMICHEN: All right.

MR. FEEZOR: Further questions of Bill or  
issues within his section of the summary report that we  
want to spend some time on this afternoon.

UNIDENTIFIED WOMAN: Terry.

MR. FEEZOR: I'm sorry. Oh, Terry?

MR. GARDINER: The -- this would be page nine

of number 10, where we talked about who could be a participating organization. And, we -- and this is meant to be example or expansive, not only what appeared here, I think, is the way this language would go. But, my issue gets to -- you know, what is a non-profit; how expansive is non-profit?

It's been pointed out to me that -- you know, different states have different definitions of what's a non-profit and -- you know, foundations are one kind of non-profit, which is a lot different than other kinds of non-profits. And, then, co-op's themselves are quite different than your classic foundation or non-profit.

So, it -- and there are you know what I guess is called B Corporations or Social Benefit Corporations. So -- you know I just want to bring up that issue as to how expansive are we. And, some states evidently, are passing legislation -- you know, creating different kinds of non-profits.

MR. FEEZOR: Terry, you're appropriate to bring that up. I think we had -- a couple of us were having coffee this morning -- that there's 16 states or

something like that, that now have sort-of, I'll call it "low-profit" --

MR. GARDINER: Right.

MR. FEEZOR: -- or "social good" --

MR. GARDNIER: Right.

MR. FEEZOR: -- corporations that are being incorporated. And, staff, as they usually are, are well ahead of us, have some language that we'll look at, a slight modification of that language, that we'll look at this afternoon that I think makes it a little less confining and still gives -- tries to carry out what we think the intent is. It's still not-for-profit.

MR. OEMICHEN: I -- as the committee chair, I'm happy to include other entities in the list, but that's why we put the "including, but not limited to" language.

MR. FEEZOR: Further questions? Bill's smiling. He's getting off very easy today. That's -- come on guys.

MR. OEMICHEN: Considering the difficulties of governance, I'm very appreciative. Thank you.

(Laughter)

(Off Mike)

MR. FEEZOR: Donna -- Donna, you're hoping the group is that easy on the second time around, right?

MS. NOVAK: There seems to be a spring in this chair, they kept hoping up.

(Laughter)

MR. FEEZOR: Our finance work group, Donna.

MS. NOVAK: Set up some water. I also would like to acknowledge the members of the subcommittee, Barb and John and Terry. Sat through a lot of conference calls talking finances, which wasn't necessarily the native language -- actuaries.

Also, HHS staff has been wonderful at doing most of my work for me and putting this all together. I really appreciate their help. And, the audience got some, I think, good suggestions this morning, that if the other board members don't bring up, maybe I will, for discussion this afternoon.

I wanted to start with a little bit of setting the stage. These weren't issues that actually were questioned during the comment period, but just to kind

of frame where we are. A lot of our discussion was around the loans versus the grants. The grant actually has to be repaid so it's not a grant in the sense that I normally use the word. And, because of that, looking at the financial requirements took a little bit different take, because the grant is used for solvency, whereas a loan is used for operational costs, but both of them have to be repaid. And, so, the -- looking at the financial strength and the financial plan, that had to be kept in our mind.

The definition of co-op, we did change in the report a little bit, to refer to a non-profit entity. Everybody can read the slide, I think, or maybe the people on the phone don't have it, so I'll read it. "Recommends referred to a non-profit health insurance entities created under the consumer operated and oriented plan section Affordable Care Act. These entities may include not-for-profit co-ops as formed under the state cooperative law." I'm hearing that maybe we need to modify that a little bit beyond non-profit, but that language was changed a little bit.

We have a two-phased application process. The

initial application, for the planning, is not a required step. It could be that a co-op has already completed a feasibility study, but we wanted to allow for a two-step process where, some funding would be available for developing the feasibility study. And, then, there would be a second application.

And, I might as well mention at this point. There was a recommendation this morning for some wording changes, as far as what would be presented for that first application. We can discuss, maybe, that this afternoon and see if we could wordsmith that a little bit.

The committee of experts, this is the final language. There were two experts added, between the original draft and the final draft. The two expertise's' that were added were expertise in reviewing cooperative information governance, and also investment experience of approving loans to business entities. Again, this morning, I think we heard one other expertise with start up's that I thought we should discuss this afternoon, but the two suggestions that had come up during the review process we included.

Substantially all - it took a lot of discussion time, and the issue around substantially all is that substantially all, being interpreted as only for individual and small group, might preclude getting some early critical mass, by working with the large employer market. And, there are a number of suggestions on wording here. Again, for individuals that aren't in the room, I can read what we ended up with as a result of all of those comments.

"Substantially all has been interpreted to have a wide range of meanings, depending upon different situations and cases. Recognizing that it may be difficult for a co-op to achieve and maintain financial stability, if it has to rely too heavily on the insurance policies or contracts to individuals and small employers. The Advisory Board recommends that HHS exercise maximum flexibility in interpreting substantially all and give applicants a number of years to meet the substantially all test."

And, we were silent as to what that test would be, as far as a percentage. We didn't want to set a percentage. And, again, there was a suggestion or a

thought this morning about self-insured. And, because we don't really go into the different alternatives. I don't know if we need to discuss that this afternoon, but it was a thought.

And, those were the suggestions that had been made that we accepted. There was one that we didn't accept. We actually accepted much of what had been included in this comment. It was just this one piece that we had not. And, that was, again, on the substantially all, that the -- there could be a sibling insurer that could write in the large group market and somehow share administrative expenses.

We saw some complications with that, in that it didn't solve the issue of actually reaching critical mass and generating the revenue to repay the loans, because the revenue from the large group would still be going to the sibling insurer. So, we weren't sure that that was a solution or that we necessarily needed to include it in the report. We thought the other language had solved the substantially all problem.

And, I didn't follow Annie's instructions and indicate what page this was on. So, if anybody has any

questions on any of these issues and what page they're on, staff gave me a really good cheat sheet that I forgot to use.

MR. FEEZOR: Rick Curtis.

MR. CURTIS: On the latter point, I should clarify this recommendation did not come from me.

(Laughter)

MR. CURTIS: However, I am -- while I can understand the reasons that this specific wording was thought to be potentially problematic, I'm a little concerned that there's a record now of having rejected the only specific proposal in this direction. And, we had, what I think are rather extensive discussions in our committee. Of a general concept that would recognize that in order to achieve economy's scale with respect to some administrative services, in order to achieve, not critical mass with respect to the reserve requirements or the specific loan requirements from the federal government, which has to do with small importers and individuals. But, with provider arrangements in a given community that -- that, there could be co-ops that entered into some kind of

coordinated arrangement with, for example, some larger employers in the area. Wherein the insurance arrangements of the co-op are all, or substantially all, individual and small employer, but there could be some synergistic coordination with respect to, for example, a TPA that both -- that some larger employers in the area use, and it uses. And provider arrangements, including financing arrangements, which then send a clear constructive coordinated sort-of consistent set of incentives.

So, this afternoon, I'm going to suggest -- I don't know quite what we should do here. But, I'm a little afraid of -- that a written record from the committee rejecting this, and not having something that's sort-of positive, or at least neutral, in a general direction, because there may be some very good ideas out there that are not at all inconsistent with the intent of the legislation, so ...

MR. FEEZOR: Tim.

MR. SIZE: Yeah. I totally agree with Rick. And, like I say, it wasn't clear to me, the rationale why the original language was rejected, because it

does, I guess, in my mind, seem to begin to address an important issue.

MS. NOVAK: The sibling insurer, you're talking about.

MR. SIZE: Yeah.

MR. FEEZOR: I -- and I sat in on most all of the discussions. And, Donna, my recollection was it was, I think, probably was a little bit of a red flag that went off when it "sibling insurer" --

MS. NOVAK: Um-hmm.

MR. FEEZOR: -- and when I'm hearing a --

UNIDENTIFIED MAN: About the first cousin?

MR. FEEZOR: Yeah.

(Laughter)

MR. FEEZOR: Listen, I'm from the part of the country that you know --

(Laughter)

MR. FEEZOR: -- first cousins, well --

MS. NOVAK: Don't go there.

MR. FEEZOR: -- let's just leave it.

(Laughter)

UNIDENTIFIED MAN: It was (inaudible) was

pretty.

(Off Mike)

(Laughter)

MS. NOVAK: Too much information.

MR. FEEZOR: The old -- the old thing about the part of the country I come from. If the bride and groom had different last names, it's a big wedding.

(Laughter)

MR. FEEZOR: The -- anyway, I think it was -- one was the use of the terminology of a "sibling insurer" that I think, as I recall, sort-of chilled people. If you're talking about coordination with -- And, Rick, let me back up and say, I think you're absolutely right.

I think the body of the discussions [that] went on here, clearly recognize that these entities will need critical mass, both in terms of their -- economies have scaled their operation to be able to keep their overhead costs as down -- as low as they can, and to be -- to have an effect in the marketplace. And, so, I think that's right -- but you are correct in saying where we have something that says specifically,

"Not accepted," that that perhaps is a stronger term. So, we probably -- I would -- the Chair would suggest that we probably do need to have something more affirmative in there. And, I think if it is coordinated with some of the terms you use, as opposed to "sibling insurer," I think that would help.

And, then, the other thing -- and I'm looking at staff on this. There was also the concern, and I think I've heard some hallway discussions that Rick, that you recognize this. That it is clear that -- it would be clear that our intent is not that these public monies, that are used to start up co-ops, somehow would, in fact, migrate over to help existing entities, be it a self-funded plan or some sort of existing insurer. In terms of their financial support, that they are used to develop this new market, targeted to these new small group and non-group individuals.

So, let's just make a note that that's one of the things that we'll spend time on, on the finance. Other comments on the finance committee's work?

MR. CARLYLE: Dave Carlyle, on again, on the line.

MR. FEEZOR: Absolute, Dave, you're up.

MR. CARLYLE: I have three comments, hopefully, you can bear with because I don't have access to -- I mean I've got the slides, but they're not up at this point.

The first thing is regarding expert panels. My sense is, when we get the infrastructure we're going to realize that integrated care is a little bit of a black hole. And, I just wonder on this extra panel there shouldn't be some sense that there might be somebody who has some expertise in integrated care to sit on that panel, to kind-of review what's being looked at, in as far as people's -- in regards to applicant's statements that they are interested in integrated care.

The second one is regarding substantially all, and I want -- I agree with everyone who talks about the need for critical mass. I just -- to get back to the idea that if a provider is a major kind-of former -- you know, they help form this entity, and they use their employees to, kind-of, be part of this process because they believe so strongly in the process of the

co-op.

I just wonder if there couldn't be a statement saying that, if providers who are part of this co-op, that they're numbers -- when they -- they're added to the total -- you know, members of the co-op don't count under the substantially all category, because of the need to have providers be so -- I mean -- you know, it will -- the success of the co-op will go a lot farther if the providers are part of this process, and even more part of it, if they actually have their employees as part of the co-op.

And, the third thing, under the sibling insurance -- you know, there was a time we talked about the fact that the co-op as a for -- as a not-for-profit might have -- create a secondary entity that could -- you know, maybe take on things like Medicare or Medicaid or even ERSA (ph) plans.

And, is that not a way that you could say that -- the co-op's are doing substantially all, but still has, as a subsidiary within itself, the ability to take on plans outside of the reserve monies being given by the federal government, for the co-op, as a

substantially all being -- you know, small business and individual. That concludes my remarks.

MR. FEEZOR: Donna, does that strike any response from the groups -- your group's discussions that might respond to Dave?

MS. NOVAK: I think I've made a note of actually all of those, and I think they fit within our expert discussion we'll have this afternoon and our substantially all. We'll make note of including those comments.

MR. FEEZOR: Thank you, Dave.

MR. CARLYLE: Thank you.

MR. FEEZOR: Other comments, or questions or items you want to call out for work this afternoon under -- when we get to the finance section.

(Pause)

MR. FEEZOR: Congratulations, Donna.

(Pause)

MR. PRAMENKO: Thank you, Mr. Chair. First off, as with the others, I want to thank staff, as well as the committee. David's on the phone, and then of course Tim, Herb, and David, as well. And, thank you,

Allen, for taking time out of your schedule to join us for some of our conversations on the phone, it was much appreciated.

Please refer to pages 14 to 16 of the report, as well as Appendix A, pages 34 to 35, as we have the discussion here regarding the infrastructure. I want to point out this has a lot to do with how the patients are going to experience their healthcare and how we really want to change that. And, the infrastructure portion of this is really about the patient experience, which is why we're all here anyway, and to try to improve that for the patients across the states.

So, that's going to be an important element as we have our discussion regarding the infrastructure and, of course, has been part of the -- an important discussion as we came up with these recommendations. So, with that, the items here on these first two slides, one through 7, and 8, 9, and 11, refer to the appendix. You'll notice that on pages 14 through 16, there's only 10 items. So, when I was making these slides up, each of those items that had consensus are referring to the appendix. So, as you see these

slides, that's what's -- please refer to pages 34 and 35 for -- on Appendix A.

So, you'll see the overview of recommendations with consensus. I'm not going to spend time here on those: Items 1, 4, 5, 6, 7, 8, 9, and 11, again, from the appendix. So, we'll get down to the items we ended up having to discuss further by phone and by e-mail here over the last few weeks.

Item 10: We had a minor change with some language. And, I think, Tim, you brought this, just to describe the relationships needed with TPA's be defined in greater detail. We agreed on the language, as you see above, just to outline it. A minor change made, but just to describe it in a little bit greater detail on that relationship. Questions on that component? Again, just some minor changes in language from what we had before.

Two-zero-five, this is item number three, under the final proposed recommendations. Two words were added, you'll see it highlighted there. And, again, the term's "relatively weaker." If you recall, we -- there was a lengthy discussion about applicants -

- state-wide applicants versus more regional applicants. And, it was our opinion that we really want strong provider networks to come -- to be formed here.

And, that is we're -- as the department is looking at applications, we want the department to be waiting those applicants that have a strong provider network, as those that might win alone from the federal government. And, so, we added some language here, just a couple words, to outline that just a bit closer as we're looking at, maybe, two applicants or three applicants from within the same state and how they should be compared.

Now, we're getting into the part that we spent most of our time discussing, between the last meeting and today, and that was the definition of "integrated care." And, this is, as it's been referred to, a black hole, a black box.

There's lots of definitions out there, and so, what we've created is quite a bit of language to try to make it very inclusive to what can be termed "integrated care." But, at the same time, offer some

guidelines to folks applying for these loans, because this is so important to the success of the co-op and to the success of the experience that the patient's going to have in that system. And, we're hoping, as an advisory panel, to possibly influence the other elements in the healthcare system, even outside the co-op program, as this adds to the mix and the exchanges over the coming years. So, you will see language.

Please turn to pages 34 and 35 of your appendix. Starting on pages 34 and going into 35, under number two, "Definitions on Integrated Care." And, you'll see that we've made a couple of additions to this slide, as well as our next slide, on elements in the appendix under number two on integrated care. There's a lengthy discussion on what that could be, 2(b)(1) through 2(b)(1)(ii) and 2(b)(1)(iii) are different variations of what integrated care is being defined as.

Item number three under Section 2(b) is a whole new addition, thank you, Barb, that we've included. And, then, we -- under 2(b)(1), we wanted the terms "Patient Center" and "Medical Home" and

"Accountable Care Organizations." Lots of different definitions out there and a lot of -- certainly a lot of interpretations of what those are across the land at the current time.

We want those to be, defined by CMS. Some of those definitions are still in flux, particularly on ACO's. And, so, as we define "integrated care" we want that to be defined fairly closely across the board, across the states, as defined by CMS Regulations.

So, in our discussions this afternoon, one point that I think we ought to have, based on morning testimony, is again, definitions on marketing. We heard, I think, some very important discussions that I'd like to bring to the committee or the -- this afternoon, regarding marketing and the terms "membership development." I'll bring that up myself. So, any comments regarding what we have here.

MR. FEEZOR: Thank you, Mike. Questions of Mike on the presentation, and then we'll move into issues that we want to note for this afternoon. Rick Curtis?

MR. CURTIS: I guess my preliminary question

is of the Chair.

MR. FEEZOR: Hmm.

MR. CURTIS: The reference materials on pages 34 and 35 are much more specific, as you said. Are those, by inference, sort-of explanatory of the committee's report, and if I have questions about those, should -- since you referenced them, ask them, or not?

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

MR. CURTIS: Pardon?

MR. FEEZOR: Yes. The -- two things. If everybody would turn to the last paragraph on page five. This report will provide a summary of the recommendations, the details related to them, if -- you'll find, basically, in the appendices. So, that answers the first part, Rick. That is --

MR. CURTIS: Sure. Okay, that's --

(Crosstalk)

MR. FEEZOR: -- our work should be viewed in its totality. And, that what we are reviewing is basically, a pretty expanded executive summary, I

guess, of that.

MR. CURTIS: Okay.

MR. FEEZOR: Now --

MR. CURTIS: My question and concern is this.

I -- you know, I personally, agree with everything that you've got here. And, you point out that integrative care -- you know, what it looks like is going to vary from community to community. And, I make no pretense that I'm nearly as expert as you and some others in this area.

I am somewhat concerned that the list of things it should include specifically, the first item, "comprehensive," and how it should be comprehensive. And, secondly, I think "continuous in nature" for a start-up co-op, may be overreaching, expecting all of that, at least, to begin with.

MR. FEEZOR: Right.

MR. CURTIS: And, it may be -- it says "coordinator, probably a primary care provider." I mean, there may be something very worthwhile that's basically, based upon primary care physicians saying that for -- you know, they're going to be the

coordinators and they're -- you know, that kind of thing in a given community may be great progress, and some of the rest of this could come later. So, I don't know precisely, what I want to recommend here, but those are concerns that I think many of us would share.

MR. PRAMENKO: Yeah. Appropriate comments.

As with other elements in the advice from all the different panels, some of what we have here are sort-of some of what lofty goals. But, at the same time, if they aren't in there, then what message are we sending?

It's important to note that if we're going to change the paradigm of healthcare in the United States, we're going to need to change the paradigm of how we coordinate care and integrate our care. And, systems as they exist now, aren't doing that.

There are places in the country that highlight that better, but still can be improved. And, if we are trying to help the success of programs, not in today's health environment, but what it will be like, and hopefully will look like, in four or five years, as the exchanges start coming.

We wanted to include in here the way it ought

to work, mostly for the patients. And, when you see words "comprehensive," "continuous in nature," "patient-centered," that, according to people that have studied this a whole lot, is the pattern and the paradigm that we should be shifting towards.

And, so, totally understand that in the year 2012 or 2014, there's many areas of the country that aren't going to have this ready just yet. But, these are goals of where we should be headed. So, a very important point, but at the same time, they should be - - we should be setting goals for them to shoot for, as we set up what the co-op plan should be looking at.

UNIDENTIFIED MAN: It's probably just a little bit wordy nuance --

(Crosstalk)

MR. PRAMENKO: Um-hmm.

UNIDENTIFIED MAN: -- all letters and sort of --

MR. FEEZOR: Rick, I would say that in looking at that it looks like there are three different definitions offered under "integrated care," as I read that section.

MR. CURTIS: Correct.

MR. FEEZOR: And, so, therefore, you could pick one that may be as -- a little less precise, such as the World Health Organization --

MR. CURTIS: Correct.

MR. FEEZOR: -- definition --

MR. CURTIS: Um-hmm.

MR. FEEZOR: -- and have elements of that and still meet the definition of integrated care.

MR. CURTIS: And, Allen, thank you. That -- we did -- you know, that was part of how this came to be three sections, is, we understood that some people might have an actual ACO ready and up and running in 2014. Others areas of the country might not have any close to that and so, that particular section, as defined by World Health Organization, might be more appropriate.

MR. FEEZOR: It had nothing -- the fact that we had three physicians on that particular panel also.

(Laughter)

MR. PRAMENKO: And, I wasn't one of them. The -- and I brought in the World Health Organization.

When I -- my sense is, and I think you hit it towards the end there, is one, that this is not a screen or a limitation. It's a vision, it's a goal. And, so, envisioning the situation we may, may not have, in a particular state of competing plans, we would have a bias towards the applicant or applicants that were closer to the goal.

MR. FEEZOR: Donna?

MS. NOVAK: Okay. This is different -- different topic. You had mentioned in one of your slides, the local versus statewide, which I totally agree with. In reading over the comments to HHS's questions on the web site, I noticed one commenter brought up an issue that I know is probably true in every state, but in their state, where patients work in one state, live in another state. In their case, their state, it was two or three other state, border issues. And, because it had come up on the slide, I was just wondering how we accommodated a local being multi-state. You know, a local provider -- you know, community having to actually, be a multi-state situation like that.

MR. PRAMENKO: Yeah. If you look at how things are arranged currently, in systems -- you know, obviously, there's state laws that are applied, but for some tertiary care centers, they're already receiving and getting patients across border in today's environment. There's no specific language in our section, under infrastructure, addressing your question. It's part -- as networks are set up -- that element, I believe, given the fact that we did not address it, would remain the same. Am I answering your question?

MS. NOVAK: I think so. I think you're saying it doesn't have to be addressed because it would --

MR. PRAMENKO: Well, the networks right now, as they exist, are crossing state lines all over, in all geographic areas of the United States, and to that extent, networks can envision themselves crossing state lines. Now, of course, they have to deal with their own regulations from state-to-state and they do now, and that won't change.

(Pause)

MR. FEEZOR: Dr. Buck?

MR. BUCK: I would just like to speak to the fact that -- you know, there's so much language in here, as it was said, but I would like to say that there's very little in this document about the type and quality of care that we very much would like to improve upon. And, I would offer that there's very little in this document.

And, I think it's -- given that we're trying to develop this co-op infrastructure for which we know fairly little. And, we will learn as time goes on, and HHS will learn as time goes on, in an iterative process, how to improve it.

We really don't have all the answers now, and nor do we have all the answers with what the definition of the ideal integrated care program is, but I think our intent here was to try to describe some of the vision of where we want to go. And, I think, offering fewer descriptions, rather than more, given how little we know and that we're in a pilot phase, I think, would be a mistake.

MR. CARLYLE: Dave Carlyle, when it's appropriate.

MR. FEEZOR: Absolutely, Dave. Go ahead.

MR. CARLYLE: Yeah, I guess that -- you know, just real quick to the general topic, integrated care. You know, it is not a mandate for a co-op, because it's only -- in regards to preference. And, in relationship to that non-mandated part, it obviously is ill defined in the legislation, and I think that's one of the reasons the Advisory Board was created in the first place, to provide some sense of what they really -- what -- you know, is the current thought process regarding integrated care -- you know, as we speak.

And, my sense is the definitions we came forward with is (sic) [are] pretty -- pretty cutting edge in a sense of the WHO. And, the sense that it -- you know, number one and number three is -- you know, really opens the door to -- you know, the multiple of people's ideas of a -- you know, kind-of being less defined than number one, number two. I think within the gamut, we've been pretty -- pretty open, but still pretty -- you know, we've been pretty prescribed (sic) -- other parts of our recommendations.

I think that -- you know, in this respect --

you know, we're -- the supervisory board is kind-of taking a compromised approach. We're trying to provide some vision, but still leave a wide opening to allow the reviewers to interpret what applicants -- you know, see as their vision of integrated care.

UNIDENTIFIED MAN: Thank you.

MR. FEEZOR: Jon?

MR. CHRISTIANSON: So, I guess the idea is -- at least in my mind, that co-op's are going to be offered in insurance exchanges, and that they're insurance options. So, with this language, do we then sort-of tend to favor insurance options that are provider-based and that are going to be able to provide assurances that they're going to be providing integrated care? Versus insurance options that are going, to be contracting with providers and they'll be asking their providers then to say, okay, in their contracts, we will promise to be integrated care providers. I mean it is an insurance option. And, I think there's -- it's not necessarily a delivery system, a co-op. So, I sort-of have, these questions in my mind I guess.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. PRAMENKO: I'll try to tackle that, I guess, Allen. Somewhat outside our scope, but we are envisioning it, as an Advisory Panel, how this will work in the greater scheme of things, as exchanges occur. And, that for people in the audience today, we want people to know that we were thinking of how this fits into the greater scope, although our task was to - - you know, stick to Section 1322.

But, indeed, the whole idea of this is to -- of the co-op program -- not the whole idea -- part of it, is to help reshape the paradigm of health care. And, possibly influence the whole market. And, if the systems are designed for better care and lower cost, that should help influence the market within an exchange.

And, so, what we have on integrated care is not just ideas that have been talked about. They're certain communities in the United States where it's actually occurred, where the care is better and the cost is lower. And, we wanted those specific

recommendations to go with what we believe is going to be a successful model for these co-op's in moving forward. Again, not in the -- not as described on how we are currently doing health care in much of the United States, but how it *ought* to be done in the United States, based on good evidence.

MR. FEEZOR: Tim?

MR. SIZE: Yeah, to Jon. My sense is -- to answer your questions -- is yes. In terms of it's -- that however the care is eventually provided, that there's -- that the application would demonstrated a long-term goal that, whether it's to be by contract or some kind of partnership or whatever, that there be a goal of beginning to integrate care.

Quite frankly, I think it's totally consistent with the way the field's going. It's hard for me to imagine in the long run, one of these entities being particularly successful without doing that, but I want to emphasize, this is seen as reinforcing that movement that our country's already beginning to see. To have it in there as goal language, but not have it be a prescriptive, because I think as soon as we cross over

to be in any type of prescriptive, it's -- a comment that was made earlier -- our field's not that developed. And, I wouldn't want to squelch any particular way of doing it. And, I don't think that's the purpose of this initiative.

A second point I wanted to make, that goes beyond Jon's question, is that we're very aware that these entities have a tremendous challenge ahead of them to get started. And, we're very cautious in not wanting to put lots of ornaments on a Christmas tree of any sort of nature that wasn't necessitated by the statute itself, in that umpteenth degree, applicants come forward and make a commitment to do things, that's different.

And, then, in a review process, competitive review process, they can be given more points when they do that. But, if we place, in the RFP, and in the regulation, a whole set of expectations that aren't currently required of the people with whom they're going to be competing, I think we do harm to the original intent of the statute.

MR. PRAMENKO: Yeah. Thank you, Tim. Just a

couple of examples to highlight this -- you know, for example, patient-centered medical home, for people that aren't familiar with that. There are places in the country, and communities, right now, where certain practices are being designated level three, which -- as opposed to level two or level one -- which they've developed themselves to the point where, they meet the actual definition NCQA, of an actual medical home: A highly integrated practice to help care for that individual, and help communicate and collaborate at the office level and beyond.

And, so, in places in the country, there might be a co-op that has multiple sites that are already level three. In another state, they might not have any. And, so, the language here is trying to be inclusive, based on the different sections you see there. Again, it could be very specific to highly developed integrated care models. In other areas of the country where that has not occurred, we did not want to preclude those communities from application and getting awarded a loan.

In addition, another example, there are places

in the country that want to apply for other elements of ACA that are going to integrate care in different fashions, different payment reforms. That needs to be included. So, there are different examples of how this will work, based on where you are in the country and I believe the language is inclusive here, enough to allow all those different levels of integration to occur, but at the same time, language that is encouraging the pursuit of common goals in regards to integrated care.

MR. CARLYLE: Dave Carlyle, one more comment.

MR. FEEZOR: Go ahead, Dave.

(Off Mike)

MR. FEEZOR: Dave, go ahead.

MR. CARLYLE: Thank you. You know, the State of Minnesota has a law that started, I think, here six months ago that said that -- you know, that all private insurance companies doing -- you know, insurance within the State of Minnesota -- you know, laws have to have a -- have to have an option within their policy to allow for patient-centered medical home.

So, insurance -- I mean you have a co-op started in Minnesota they would, by law, have to have a

patient-centered medical home -- you know, piece just to exist in Minnesota. So -- you know, a co-op -- you know, and they're -- just would have a contractual relationship with these primary care -- you know, places. All I'm trying to say is, I don't think you have to have a provider generated co-op, in order to have integrated care contracts with providers -- you know, as per -- you know, the Minnesota law. Thanks.

MR. FEEZOR: Thank you, Dave. Any final questions of Mike and his committee's work, or issues when we get to the infrastructure section, that we need to chew on this afternoon. Mike, thank you very much.

MR. PRAMENKO: Thank you.

MR. FEEZOR: Ms. Yondorf?

(Pause)

MS. YONDORF: Hi. Thanks. This is the criteria of process and compliance subcommittee, which really should be called the criteria of process compliance and stuff committee --

(Laughter)

-- because really, that's a nice name. We were the cleanup group, if you remember. We didn't

exist initially, and then we said -- Allen said, "You thought, as co-chair, you just had to certify died, but we actually, want to give you something to do, so we'll give you the cleanup."

Let me just say, in the context following right from what -- the conversation we had about -- if you've seen one ACO, you've seen one ACO might need a definition -- you know, medical homes starting to develop some expertise at their different levels. Unfortunately, the law did not copyright the term "co-op." And, so, in my state, we had a bill introduced, literally, saying it would create a co-op, which was a government created and government sponsored really, single, pair plan.

So, we had to say, "Oh my gosh." So, I just want you to know that if something's formed in Colorado, it is not going to be a co-op. It's going to be a co-pip, because we've got -- we've got all this confusion now. So, we've got consumer owned private health insurance plans. So, co-pips in Colorado.

Okay. My conversation will be pages 17 through 21 of the main paper, and pages 38 to 40 for

the details. So, starting with the consensus recommendations. These -- most of these were fine, there were just little fixes to them. So, one was, having to do with private support.

You'll recall that it says -- you know, we'd like to see some private support, or we'll give priority if there's private support. We already had a definition. You can see it there. I believe the only thing we added to it was that we did count just letters of support from key community leaders. It wasn't necessary that they had to actually give the support, and that's page 17, number one.

The second one had to do with where there's more than one qualified applicant. And, we just had a good conversation about that. What we added to that was the last phrase, "commitment to co-op goals and objectives was an important addition." I think, Bill, you gave us that, thank you. And, I would just point out a couple of things that we do have there, if you look at them.

Someone, I think, from the audience said there should be people -- I think it was on the Board with

business startup experience. And, we have specifically non-profit business improvement startup experience. So, that's in the details, if you look back on pages 38 to 40, we did address that.

And, Dave Buck, we did say -- when you go again to the detail, that we're interested in "new innovative reimbursement miles, emphasis on care coordination and quality of care commitments." So, at least we have some additional language to what you just heard.

Continuing on page two of four. We were charged with what happens -- under what circumstances might HHS consider defunding an organization. And, I think one of the additions that we had, Terry, I think that was from you. We had HHS "should" consider, and we said, you know what, it's really a "could" consider, let's not race out to shut down a struggling co-op. And, I think that was really important.

We were considering adding tsunamis and nuclear meltdowns to the list. We hadn't thought about that, but probably -- I want to add that. Quality of care standards, we added to this list of situations

under which you might specifically, consider discontinuing funding and something to be looked at.

MR. FEEZOR: Barbara, can we? Mark, do you want your question now or later?

MS. YONDORF: I'm sorry.

MR. HALL: It's about that section.

MS. YONDORF: Yeah.

MR. HALL: Yeah. I was going to raise as an issue, also adding to that, sort-of failing to have the kind of consumer focus that they originally -- you know, promised to have. So, that most of the sort-of stepping in and pulling the plug stuff has to do with financial failure, but I think there could be sort-of a governance failure aspect that we should consider adding to that so, for afternoon discussion.

MS. YONDORF: Good. Thanks, good point. Okay. Next page, "Applicant should be required to demonstrate engagement with local and state insurance regulator's knowledge of the licensing requirements." I think we left that pretty much the same.

We heard over, and over again, about the importance of HHS or someone else approaching national

foundations and others about providing technical assistance directly to applicants and grantees, and we really do want to emphasize how very critical that is and hopefully, those conversations have already begun and we can back them up.

The sixth one is the issue of the need to be ready to enroll members during the first exchange open enrollment period. And, we just really honed in on this section to be very clear about how critical this is. And, to say that "Gee, the folks at HHS have been sitting around without too much on their plate, should we make this really a priority."

So, we are strongly recommending a very quick process with some very specific dates here, designed to say that really, hopefully, you can get the money that you need to launch one of these, ideally, no later than say, around January at the latest, if you're ready to go, because of how much time it really does take.

Seven. After the first round of applications, we had some conversation about how we would do this, and decided that, even though we like everyone to be ready right away, and run in there and get an

application in by the end of the summer or early fall, but that we also didn't want bad applications, not well thought out, or that people who weren't ready to go would somehow be frozen out. And, that the best thing would sort-of be to do a rolling admission process. When you're ready to go, you can submit an application, it will be considered in that normal 60-day period, to allow people to come in when they're ready. So, those were the ones on which we had agreements.

Now, with respect to the ones that required further discussion, I think, again, we got this from Terry, a really, good point about discontinuing funding really should be a last resort. We were asked to address the question of, under what circumstances might you discontinue funding, but I don't think we took care to say, "Whoa, we really would like you -- that really to be a last resort."

So, page 18, number three, we talk about really, every effort should be made to help a co-op succeed. And, we have some language about some ways to do that greater oversight, and that in some circumstances that you actually might want to give them

a little more money in the short run, with strong oversight to get them over a hump, rather than just pulling funding immediately.

Finally, we had a recommendation that loan repayment period should not begin until enrollment has been achieved. And, we do think this is really important because you remember there is a loan payback period, but it's a little hard to imagine repaying a loan or a grant if you don't have money coming in the door yet. And, money coming in the door means that you have to actually have people enrolled, have them bring in some premiums. And, so, that our suggestion is that the loan repayment period not begin until enrollment has been achieved. Donna?

MS. NOVAK: Do you --

MR. FEEZOR: Questions of Barbara with regards to the materials she presented, Bill?

MR. OEMICHEN: Just to that last question. When enrollment's been achieved, do you mean when enrollment begins or when they've reached a critical mass, as they designated within their business plan that they provided to HHS?

MS. YONDORF: Well, we didn't quite get that specific.

MR. FEEZOR: Eenk, out of order.

(Laughter)

MS. YONDORF: If you want to --

MR. FEEZOR: Barbara --

MS. YONDORF: -- you know, give some language this afternoon. I think it's a little --

MR. FEEZOR: It's a good point.

MS. YONDORF: I don't know how much we want to micromanage this, so I think that's a good one to flag for this afternoon.

MR. FEEZOR: Okay. Donna?

MS. NOVAK: That was really my point, too. I think it also -- maybe it's until they're profitable. I mean two small groups isn't really going to be enough to start being able to repay. So, we can talk about it this afternoon, but ...

MR. FEEZOR: Further questions of Barbara on the materials presented or the section under her? And, while we can only suggest, we did put the timeline in, so that is actually a part of this report, and so,

you're invited to take a look at that, as well as to make sure -- whether it's reasonable, everybody's going to have to be really, really pushing things. And, we all know that. And, yet, to underscore Barbara, your comment about, we really do hope as many of these entities as possibly can be, will be ready for the -- I call it the surge of 2014.

We do have a -- sort-of a default in the application process that we talked about, of which, if, in fact, a group does find that it cannot quite get to the start line by 2014, then they would have to -- there's an additional burden of reporting that they would have to present to the department as to how they really could be viable and still hit many of their marks, in missing that first big year of enrollment.

MS. YONDORF: And, I just (inaudible) mention if you didn't look, on page 21, I think it was Annie who put together, is that right, this beautiful chart here that really shows what the process is, that there are two stages to it. We talked before. If you're ready immediately to go to your development grant, that's okay, and how the whole process would work. So,

I think it's a nice description of the flow. Thank you.

MR. FEEZOR: Well, we are running substantially ahead of time. Do we --

(Off Mike)

UNIDENTIFIED MAN: Let's get started.

UNIDENTIFIED WOMAN: Do you want to start the afternoon --

MR. FEEZOR: We can go ahead and start the afternoon session, because I know we've got a few things. Let me -- if the -- I'm seeing nods. Let's get on with it. So, we will roll back around.

I'm going to put probably, all of us on the spot, but Bill, we're going to probably come up to governance real fast, so get your points that you took down that we need to visit, and I'll let you cue them up.

MR. HALL: Allen?

MR. FEEZOR: Mark?

MR. HALL: Well, I was just going to say there's a few preparatory pages that we could cover.

MR. FEEZOR: That's what I was getting ready

to give to him. But, before we do that, as threatened, the Chair will entertain a motion on the summary minutes from our February meeting.

MR. OEMICHEN: (Inaudible)

(Off Mike)

MR. FEEZOR: Moved by Bill. Second. All in favor say aye.

ALL: Aye.

MR. FEEZOR: Opposed?

(Silent)

MR. FEEZOR: They are approved. Now, we will move into -- hang on a second.

(Pause)

MR. FEEZOR: We will begin the review of our documents, and this would be in the initial summary pages. That is page -- I guess it would be the overview section, and the script I'm reading from, it's page four and five.

MS. NOVAK: We're not (inaudible).

(Off Mike)

MR. FEEZOR: And, my colleague from North Carolina has done us all a big favor. And, he must be

a hell of a grader in his professorship, but his sort-of typos and wordings, he put together a nice summary page to share with staff. And, I would urge some of the rest of us who have that same sort-of need to be professorial, or to, in my case, to mimic my schoolteacher mom, to take those. And, we'll keep those -- we'll not clutter our afternoon discussions with those, but allow those to be incorporated by the staff, in their judgment, and with the assurances that none of that will change content or intent.

MR. HALL: (Inaudible)

(Off Mike)

(Laughter)

MR. FEEZOR: Oh, okay, well, I apologize. I'm picking on you, Mark, but thank you very much. That's very helpful in terms of what you provided earlier. Starting with the overview, it's a page-and-a-half, page four through five. And, if you -- I'll draw some attention that you're -- the very bottom paragraph on page four that begins, really sort-of says what are the four key elements that we feel pretty strongly about, and I want to make sure that that's not an

overrepresentation. And, if there are other areas in that page-and-a-half that there's some concern about, let's hear it.

(Pause)

UNIDENTIFIED MAN: Mark -- hand's up.

MR. FEEZOR: Oh, I'm sorry, Mark?

MR. HALL: Dually noted about the wordsmithing, but I do think it's a matter of substance. These key goals, I think -- I'm glad you drew our attention to it, because it makes a pretty big statement about what we consider most important.

I had sort-of an issue with number two, solvency. I didn't think that -- you know, vigilant assurance of financial stability was on par with the other three principles that we focused on. We certainly talked a fair amount about solvency, but I thought that sort-of the jest was more to try to be flexible and workable with regard to solvency. To -- you know, encourage the states to count the grants as capital, for instance.

And, I'll just note that Alan Medy (ph) who presented this morning, stressed the point, in one of

his recommendations, that in terms of having provider-based plans, where the provider's give whole harmless or capitation arrangements to bear risk, that his recommendation was that we -- that the states count that as a way of meeting solvency concerns.

So, I tend to agree with that point-of-view. And, so, felt that stressing the sort-of -- you know, having enough reserves that -- you know, I mean the sort-of, as between the two risks of being over capitalized and undercapitalized, I don't want to stress the over capitalized goal.

MR. FEEZOR: Mark has underscored two, questioning whether or not that rises to the same level of import, in his way of thinking, maybe as not. Just parenthetically, Mark, I had looked at "must be" and said, "I wonder if should is a little." So, I obviously had a little bit of concern how that was stated, but what are the thoughts of the other folks around the table?

MR. FEEZOR: Barbara?

MS. YONDORF: Me? Maybe it's wearing my former regulator hat. I think this is an important

statement. I think what -- you're right, we did a lot of things to say, sort-of, what these words mean. But, I don't think we were, in any way, trying to undercut how important solvency is. We were just making statements about what should/can't towards solvency. And, I took financial stability exactly -- when you read the document, to play into, don't just assume 200 RBC is good enough, that you want the entity to be financially stable and that may well mean it needs to retain some of the quote, unquote "profit." So, I think we actually spent a lot of time to make sure that they were solvent and financially stable. So, I wouldn't take this language out.

MR. FEEZOR: Donna?

MS. NOVAK: I agree. I don't know about the wording, but I think it should be strong, anyone who has seen, up close and personal, the insolvency of a health plan, would not take this lightly. Providers don't get paid. They're headlines in the newspaper. A lot of uncertainty about -- from patients who don't know if their care is going to be paid for. This is pretty, serious. It has to be one of the top. I don't

know about the wording of it, but ...

MR. FEEZOR: Rick?

MR. CURTIS: I suspect wordsmithing is what's needed here. And, I -- "vigilantly" is in the eye of the beholder. I think Mark's point that this may be calling for, sort-of, counterproductive vigilance that's sort-of overboard and obtrusive, and by some state regulators, may be true. It might help just to say, "It must be maintained and promoted," rather than "vigilantly."

MR. FEEZOR: Or even, "need to be maintained and promoted."

MR. CURTIS: Yeah.

MR. FEEZOR: I'm seeing a few nods. And, you folks, please speak out. But, I'm going to suggest then, that we authorize that word change to be something along the lines of "need to be maintained and promoted."

MR. CARLYLE: Dave Carlyle, I agree.

MR. FEEZOR: Yes, sir, Dave.

MR. CARLYLE: No, I support the --

MR. FEEZOR: Okay, good.

MR. CARLYLE: -- toning down of the language.

MR. FEEZOR: All right.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. FEEZOR: Further -- Mike?

MR. PRAMENKO: We've had some discussion, and maybe it doesn't belong in the overview because it's not specific to Section 1322. But, does this Advisory Board believe that we need to make some sort of comment on how we believe Section 1322 fits in with the other elements of the ACA, or is that beyond what we think we should do?

We had several discussions over the last few months about how that -- again, I would say yes, simply because there are places where people still don't understand how this could help reshape their health care system. And, if they're reading this section for the first time, it might set off a light bulb or two. And, I know our job isn't to sell this program, but it is, I believe, part of our role to help describe how it fits in with other elements of health system reform, specifically, on the exchanges.

MR. FEEZOR: You've heard Mike's suggestion. Mike, let me draw you out just a little bit more. Give me a phrasing, not precise, but sort-of, of how you see that, now that might be.

MR. PRAMENKO: I can give you a concept, maybe, not a phrase just yet --

MR. FEEZOR: Okay.

MR. PRAMENKO: -- but, I can envision it along the lines of -- some of the discussion we had about integrated care, how we were trying to leverage health system change after 2014. And, how the -- how greater choices in the insurance market, in certain places in the country -- you wouldn't have to use that word -- might facilitate an improvement in the health care system.

Those are commentaries, but at the same time, realities in how our health marketplace works. And, some of the ideas behind the exchange, and the co-op's, have to do with reshaping health systems. And, co-op's could provide the proper leverage, if a state so decides to use it that way in their exchange.

Again, I'm only tossing this out. It might

[be] beyond the scope of this committee, but there's a significant lack of understanding on how co-op's and the exchanges could potentially work to help facilitate models of -- a new paradigm shift in state health system environments.

MR. FEEZOR: Mike, if you would, look at the last two thirds of the paragraph on page 22, starting with, "This program combined with other elements of the Affordable Care Act." I think it sort of starts down that path. I don't think it goes with some of the concepts you were presenting, but I guess what I would suggest is that at least it would fit well in there. And, if you want to spend a little bit of time thinking about some additions, by the time we get to there, we might be able to work something out.

MR. PRAMENKO: Fair enough.

MR. FEEZOR: Further discussion on pages four and five?

(Pause)

MR. FEEZOR: With the one noted change that Rick Curtis -- about the "need to be" instead of the "must be vigilantly," I'm going to assume that we have

a closure on those -- on that overview. And, we're not going to take lunch until we get through governance, so

--

(Laughter)

MR. FEEZOR: -- a little incentive there, guys. Bill or Annie, from your light grilling this morning and some comments made earlier, what's the -- and I'll try to -- we'll try to -- Barbara and I both will try to support you in this regard, but --

MR. OEMICHEN: Thank you.

MR. FEEZOR: -- what were the first things at bat we need to take a look at?

MR. OEMICHEN: The first item, I have at bat is an issue that I think was raised by David Buck, which is the Secretary's consent, whether it should be a permanent consent requirement, or whether, as we have in our draft language, "the life of the loan and grant plus ten years."

MR. HALL: Where are we?

MR. OEMICHEN: I'm sorry --

MR. HALL: -- are we --

(Crosstalk)

MR. OEMICHEN: -- yep, we're at --

MR. FEEZOR: Yes.

MR. OEMICHEN: -- number 13 on page 10 of the text. Pardon. Mark?

MR. HALL: I've got several things before that that you --

UNIDENTIFIED WOMAN: Yeah.

MR. OEMICHEN: Oh, okay. I'm --

MR. FEEZOR: Go ahead.

MR. OEMICHEN: -- not sure.

MR. FEEZOR: You can take them at your order.

MR. OEMICHEN: Yep.

MR. FEEZOR: We'll -- we'll get them all.

MR. OEMICHEN: Yeah. I'm not going in chronological order of the text, actually.

MR. HALL: Sure.

MR. OEMICHEN: I'm going as they were raised, at least the way I had them listed as they were raised.

MR. HALL: Okay.

MR. OEMICHEN: Sorry.

MR. HALL: That is fine. I've got a couple other things this afternoon.

MR. OEMICHEN: Okay. Well, we'll make sure that we get all of them. And, remember, lunch is at the other end.

(Laughter)

MR. OEMICHEN: Okay. David Buck -- That wasn't directed at you, Mark, necessarily. David, so the question, once again, is the life of the loan or grant plus ten years, or making the Secretary's approval permanent? The working group had a significant, lengthy discussion over this. And, the preference of the working group was to keep it at "the life of the loan, plus -- the life of the loan or grant plus 10 years," because there was a thought that, if we kept it as a permanent type of requirement, by the Secretary, that that might be viewed by members of Congress, and others, as too much government involvement.

And, that's the reason why we came up with that. Certainly willing to look at other arguments, but that was the substance of our discussion within the working group. And, Mark, I don't know if you wanted to add to that. It looks like you do.

MR. HALL: Yeah. Between the number 10 and infinity are a lot of other numbers.

MR. OEMICHEN: Right.

MR. HALL: And, so, we could make it 15 years. We didn't sort-of say --

MR. OEMICHEN: I have.

MR. HALL: -- sort-of -- I remember in the discussion, 10 was sort-of the longest that was put out there, but if somebody wants to propose another number --

MR. OEMICHEN: Right.

MR. HALL: -- I don't think it would be inconsistent with the discussions.

MR. OEMICHEN: Right.

MR. FEEZOR: Dave?

MR. BUCK: My only concern is, is that we heard from many people how that was a risk, and I don't know the numbers, but is that a sufficient disincentive to reduce that?

MR. OEMICHEN: Well, I would -- given all the other requirements we put in that -- a conversion -- I think that's added a lot of -- I don't know if I want

to use the word "disincentive." But, it certainly makes anyone looking at conversion, look at it very closely, because there are a number of financial penalties, and a number of barriers, that would make it difficult. If someone's just doing it to try to enrich themselves, him nor herself, I think it would be very difficult.

So, I think if it was just the more general language that we originally had, with all those subparts, then, I think your comment would be particularly well served, or well stated, but I think we've added a lot of protections in to help alleviate any concern you might have. So, we're okay with staying with the working group language?

Then, the next issue that I had was on page 10, number 13B of the text. And, then, in the subcommittee report, page 24, number 18. I hope I have these numbers right, but the question there was regarding -- we have a bar against prior boards of directors from carrying over to the new boards. And, we have barriers on what kind of compensation they can or cannot get, to make sure that there's no unjust

enrichment.

The issue was brought up whether the same prohibition should be expanded to executives or prior management. I think what the working group really intended to do was to say that there's no bar to carry over of management from the prior group to the new group, but there shouldn't be any unjust enrichment from that transition.

And, we could make that language clearer. For example, I'd hate to get into wordsmithing, Mr. Chair. But, on number 18, on page -- I'm not sure what it is. But, it's of the -- page 24 of the -- I wrote over it: "Keep the current language current and past board members should be prohibited from participating in the converted entity post conversion and ..." Add in some new language: "... current or past board directors, or management, from receiving any compensation in the form ..." And, continue on with the rest of the language.

So, it subdivides out who can -- that management can be in the new entity, but there can't be unjust enrichment as we go along. It's not perfect language, but at least trying to deal with the issue

that was before us.

MR. FEEZOR: Is what Bill's suggesting clear?

MS. YONDORF: Could you repeat -- say that again?

MR. FEEZOR: It -- okay -- it's not.

MS. YONDORF: Could you just repeat what you're suggesting?

MR. OEMICHEN: Okay.

MR. FEEZOR: Repeat what you're suggesting.

MR. OEMICHEN: Yep. I'll repeat the current language: "Current and past board members should be prohibited from participating in the converted entity, post conversion ..." And, then, adding in new language: "... and current or past board directors or managers from ..." And then, continuing on with the existing language: "... from receiving any compensation in the form of salary, consulting ..." Well, maybe that's not perfect.

MR. CURTIS: No.

MR. OEMICHEN: I've got to get the unjust enrichment --

(Crosstalk)

MR. CURTIS: I think --

MR. OEMICHEN: -- okay, never mind.

(Crosstalk)

MR. CURTIS: Yeah. That's not what I heard  
the problem to be.

MR. OEMICHEN: Yeah, that's the unjust --

(Crosstalk)

MR. CURTIS: -- because --

MR. OEMICHEN: -- enrichment part, but --

(Crosstalk)

MR. CURTIS: -- right.

MR. OEMICHEN: I had some language written in  
there, but I don't have the page here, so ...

MR. CURTIS: Right, well, we have other  
language saying --

MR. OEMICHEN: Right.

MR. CURTIS: -- that managers could continue,  
they just can't receive unjust compensation.

MR. OEMICHEN: Right.

MR. CURTIS: The language you just read would  
seem to be inconsistent with that.

MR. OEMICHEN: Right. Never mind.

MR. CURTIS: But, the specific concern that I

heard from Mike was that -- that a current or past board member might be given a high level executive position on management and therefore --

MR. OEMICHEN: That was the third issue. I hadn't gotten quite to that --

(Crosstalk)

MR. CURTIS: Oh, okay.

MR. OEMICHEN: -- one yet.

(Crosstalk)

MR. CURTIS: Okay. Well, I think the language you're suggesting would -- could be counterproductive if it precludes retaining anybody who is an administrator from the previous organization, which is --

MR. OEMICHEN: Yeah. I don't think I -- I didn't suggest that.

(Crosstalk)

MR. CURTIS: Okay. Well, that -- that's why -

-

(Crosstalk)

MR. OEMICHEN: No, no. I -- the language was meant to refer to unjust enrichment. So, if you have

an executive from the existing entity, non-profit entity, and then they convert to the new co-op, that they're not be unjust enrichment of management in that process.

MR. CURTIS: Well, it says that -- I mean you -- this is modifier number 18, which talks about receiving any compensation --

(Crosstalk)

MR. OEMICHEN: I've already -- I already withdrew that language, Rick, sorry.

MR. CURTIS: Oh, okay. Sorry.

MR. FEEZOR: So, we are back --

MR. OEMICHEN: I wrote it in a different and I haven't found it yet, so ...

MR. CURTIS: Oh, okay.

MR. FEEZOR: We're back on language 13(b) --

MR. OEMICHEN: Yeah. I apologize for the confusion.

MR. FEEZOR: -- on page 10.

MR. OEMICHEN: Okay. You have to understand, we're working with a lot of different pages here, and it's getting hard to go back and forth between them.

MR. HALL: All right, so --

MR. OEMICHEN: So, the question is -- now, Mark is on -- go ahead and restate.

MR. HALL: Well, 13(b), the second sentence says, "There should be substantial prohibitions on board members or management receiving financial gain or participating in the governance or management of the converted entity."

MR. OEMICHEN: Right.

MR. HALL: Okay. So, there we have --

MR. OEMICHEN: We have that covered. Right.

MR. HALL: -- board and management together. Now, the problem is -- you know, maybe financial gain means -- unjust enrichment means -- you know, I mean one way to say it is, it's fine to keep your job and do your job and get paid for your job. It's wrong to gain from the transaction itself.

MR. OEMICHEN: Right.

MR. HALL: So, to get essentially, a bonus from the transaction. So, that -- maybe that concept comes through with receiving financial gain, but then when we say management can't participate in the

management of the converted entity, I think we're now in danger of -- of going too far.

MR. OEMICHEN: Yep.

(Pause)

MR. GARDINER: Mr. Chair?

MR. FEEZOR: Yes, Terry?

MR. GARDINER: Well, also, one -- you know, principle, which maybe makes more sense for the Advisory Board too, but is -- it's not just the -- you know, add the concept of -- that it's not just the financial gain or benefit, it's the -- you know, relating it to the incentive of the Board or the manage members to push the deal through. You know, that's the really sort-of corrupt part of this.

Like, okay, yeah -- you know, we're doing this for the good of the members, the consumers, and everybody, but actually -- you know, that's what people are really up to. And, so, I think expressing that conflict interest somehow, in the language as -- you know, what are we -- what behavior are we really trying to stop?

MR. OEMICHEN: And, I think that is a

legitimate concern. We have a case in Minnesota -- *Minnesota Corn Processors* that was prosecuted by the U.S. Attorney, because it was a case where the management convinced the Board of Directors that they ought to basically, convert, and partially through a sale to a new company.

And, in that there was testimony that came out that the manager said, "I'm the only one who could convince the Board that the company's worth less than it really was." And, then, the U.S. Attorney was able to show that there was substantial enrichment of management afterwards. And, it was a successful criminal prosecution by the U.S. Attorney.

So, I think that's a legitimate concern on how do you prevent that type of thing from happening. And, we were trying to deal with it by saying, "no unjust enrichment," but there was a lot of concern about just barring managers from the previous company from serving with the new company, because you lose all that expertise. And, so, how do you deal with those two perhaps, competing interests?

And, the way we tried to do it is just say,

"No unjust enrichment of management." And -- the language probably could be written a little bit cleaner, Mark, I agree with you on that.

MR. HALL: Well, yeah, maybe this is -- I think we're all agreeing with the principle. So, I think we've identified the two language points. It might just be easier over lunch to come up with --

MR. OEMICHEN: Right.

MR. HALL: -- replacement phrasing. Right?

MR. OEMICHEN: I agree.

MR. FEEZOR: Obviously, we're going to have to, but we're going to finish this before lunch, then, Mark, right? No.

I guess I'm struck with Terry's if I might, Terry's observation. What if we tried to interject in "there should not -- there should be substantial prohibitions on the ability of the Board of Directors and management team, to receive financial gain, either directly or indirectly, from the transaction."

I mean we're trying to start that sort-of -- capture that thought for a minute. "Participation in governance of management may be allowed under certain

circumstances, provided there's no substantial  
inurement or -- what do I --

UNIDENTIFIED WOMAN: Enrichment.

MR. FEEZOR: -- enrichment." Does that get us  
a little closer? And, then, just as an observation.  
There was some discussion, somebody made the -- that we  
probably need to talk about -- from the successor  
organization or the -- there was some broader language.  
It said not only the entity -- that the newly merged  
entity, but from some sort of parent company that might  
have had something to do with that. And, I thought  
that also captured what we were trying to -- let's  
sort-of sit on that --

MR. OEMICHEN: Let's sit on that one.

MR. FEEZOR: -- over lunch and --

MR. OEMICHEN: I think that's good language  
suggestion, though.

MR. FEEZOR: Okay.

(Pause)

MR. FEEZOR: Next.

MR. OEMICHEN: Okay. I'm trying to make sure.  
Did we handle your state regulator issues --

MR. FEEZOR: Yes, I --

MR. OEMICHEN: -- to your satisfaction? Okay.

MR. FEEZOR: -- obviously, I was reading it very narrowly.

MR. OEMICHEN: Okay. And, then, let's see here. Since I thought, I was going to have lunchtime to get all this prepared.

(Laughter)

MR. OEMICHEN: On page 9, number 10. There were some suggestions expanding that list, because there were concerns that if we didn't include something it might be read as to not include it. And, I countered by saying, "Well, we said 'not limited to this list.'" But, is there something that someone really feels strongly about, they want to have included in that list? I know there was -- I forget exactly the term that describes it, but like the low-income health clinics that type of thing. Mark?

MR. HALL: So, I think the best place to put that would be number seven. And, I think we had some suggested language for that.

MR. OEMICHEN: Okay. Do you want to read your

suggested language again, Mark? Or whoever has the suggested language.

MR. HALL: I think that's this red stuff here that --

MR. FEEZOR: Yes, it is (inaudible) --

(Off Mike)

MR. HALL: -- Barbara annotated.

UNIDENTIFIED MAN: Barbara had it.

MR. FEEZOR: Hang on. (Inaudible)

(Off Mike)

(Pause)

MS. SMITH: "To be eligible to apply for loans and grants, under the co-op program, the applicant shall have legally formed the relevant non-profit, not-for-profit, or public purpose entity, organized as appropriate under relevant state law. This could for example, include non-profit cooperatives. The entity will present to the Secretary, evidence of such organization, at the state level, with the application for funding under the program."

MR. FEEZOR: This is the language proposed, and it was dealing with part that the evolving statutes

and --

MR. OEMICHEN: Right.

MR. FEEZOR: -- corporate structures for non-profit (inaudible) entities seem to be changing. Tim?

MR. SIZE: Yeah. I -- if I understand -- I'm not a lawyer, but if I understand the language, it gives the flavor that flexibility. And, the problem I see with that wording, as well as the original wording, if I'm clear, given the very tight time frames. If this is a new entity, they can incorporate, but they're not necessarily non-profit until they're deemed to be non-profit. From a -- at least from an IRS perspective and that can -- with the backlog these days, take forever.

MR. FEEZOR: Well, not only --

MR. OEMICHEN: That's tax exempt, yeah.

MR. FEEZOR: Yeah. That's the tax-exempt purpose. They can be formed as a non-profit --

MR. OEMICHEN: Right.

MR. SIZE: -- but the actual tax status is conferred by IRS. And, for those who have not seen it, the IRS put out a recent notice with regards to how they plan to do the 501C-29's. And, they basically,

have -- obviously, they're focusing on it, but they're going to make sure that the department is pretty clear about what it's doing before, I think, it -- they begin to step into the action on that.

MR. SIZE: Right.

MR. OEMICHEN: And, I agree. I form lots of co-op's in a typical month, and most of them are non-profit. And, when I do the filing with the -- in our case, in Wisconsin, the Department of Financial Institutions, I send in the non-profit filing right away to the IRS. And, usually, the number's generated within a couple of weeks, if that. It's usually earlier than that.

MR. SIZE: Yeah, but they're other corporate models -- I agree with you on that --

(Crosstalk)

MR. OEMICHEN: Oh, absolutely.

MR. SIZE: -- on other corporate models, I don't -- I mean I -- and maybe it's just --

(Crosstalk)

MR. OEMICHEN: But, it would be the same type of process. So, you're filing the paperwork with the

IRS right away to get that non-profit designation.

MR. FEEZOR: But, Tim, your concern is that even with the broaden language, the fact that we continue to use the term "non-profit" or "not for profit" --

MR. SIZE: Yeah, I'm not the only --

MR. FEEZOR: -- may impede these things.

MR. SIZE: -- non-lawyer out there who could confuse that. I mean I guess if it's meaning that -- if the Articles of Incorporation indicate the statements that would then later be deemed by IRS that they're tax-exempt. And, that's what we're calling non-profit, but I mean I think for most of us, we don't think of it as being non-profit until they get some kind of governmental approval of tax exemption, so ...

MR. OEMICHEN: Yeah.

UNIDENTIFIED MAN: Well, if we retain the phrase and apply it more generally "under state law," it seems to solve that.

MR. OEMICHEN: Right.

UNIDENTIFIED MAN: Right. (Inaudible) retain its non-profit cooperative --

(Off Mike)

MR. OEMICHEN: And, we have that in the subcommittee report --

MR. FEEZOR: Yep.

MR. OEMICHEN: -- we don't have as many words in the text, so if you go back and look at the subcommittee report that is there.

MR. SIZE: I think we're good.

MR. OEMICHEN: Okay. Then, on that list, there was the testimony related to Taft-Hartley's. Do we want to deal with that here or is that --

MR. FEEZOR: You know -- and maybe I'm trying to simplify it. And, Tim, I think -- I share your concern that we don't want to put unnecessary barriers, but these entities have to be incorporated. And, they have to, in their incorporation papers, in most states, they have to fall into one category or another.

Is there ownership or isn't? Are they in a for-profit, are they a mutual, are they -- And, so, I think, given the -- what we're having to do, which is that they -- Since they are going to be having to incorporate in the state, and then ultimately, they

hopefully, will be applying to the IRS for that specific tax designation, that I don't know that we can push them much beyond this. And, I think this should give the Secretary -- if you have set up the entity within the appropriate statute, in your state, it seems to me that that's probably about all we could require at this point in time, in terms of the application process. Mark?

MR. HALL: I'm sorry. (Inaudible)

(Off Mike)

MR. FEEZOR: Go ahead.

MR. HALL: You okay with that Tim, or --

MR. SIZE: Yeah, I think -- it's just -- I'm not a lawyer and so I just -- and I didn't give a non-profit for tax exemption. I mean I -- I guess I think I've seen associations that -- I'm not sure that when an association incorporates that they -- there's -- every state has a statute that says they're making a declaration non-profit, and they simultaneously get a tax exemption at the state level. I didn't think it was that crisp.

MR. OEMICHEN: No, but these are -- these are

documents you're going to have to provide with your application to HHS, and hopefully -- we have a request, if not a mandate, in there that the parties work with HHS, and HHS can make sure the file's complete in the case --

MR. SIZE: My concern is that, in our state level and our federal level, that there's appropriately so increased -- I'm sorry -- increased robustness being put on the request for tax exemption. And, so, I just think it needs to be clear that at neither the state, nor the federal level, is that a requirement of having accomplished that before they apply.

MR. OEMICHEN: I think --

MR. SIZE: And, I'll defer to the lawyers that

--

(Crosstalk)

MR. OEMICHEN: -- most --

MR. HALL: Yeah, okay. So, as a lawyer, I can't imagine somebody applying to this without a lawyer, and I think the lawyers would understand that.

MR. SIZE: Yeah.

MR. HALL: And, plus, the IRS has told us,

"We're not going to give you exemption until you get your grants." So, it's crystal clear to all the lawyers --

MR. SIZE: But, even at the state level, it's not clear to me that what, you would qualify as a non-profit before you got tax exemption from the state. And, I believe that's a separate process than getting incorporated. In any event, I think it needs to be really, clear to the lay applicant that we're not putting that burden on them.

MR. HALL: Okay. So, you're not really satisfied with this. I guess I've got to go back to the --

UNIDENTIFIED MAN: I had a --

MR. FEEZOR: A slightly different --

UNIDENTIFIED MAN: -- not another point, but -

-

MR. FEEZOR: Are we still on this section, the proposed --

UNIDENTIFIED MAN: I don't know how you want to resolve Tim's uncomfortableness (sic) with this --

MR. FEEZOR: Yeah.

UNIDENTIFIED MAN: -- I --

UNIDENTIFIED WOMAN: (Inaudible) suggestion.

(Off Mike)

MR. HALL: He just had a sentence that it be explicit that it neither stay at the federal level. Is the receipt of tax exemption necessary to meet this definition of non-profit?

MR. FEEZOR: All right.

MR. SIZE: I think --

MR. FEEZOR: Too, in other words, something along the lines of "to be eligible, an entity shall have appropriately incorporated, but may not have -- may not be necessarily ineligible because it has not received the state designation --

MR. HALL: Yes.

MR. FEEZOR: -- as of the time of filing.

MR. HALL: Yep.

MR. SIZE: That just is going to confuse things.

MR. HALL: All right.

MR. FEEZOR: Does it?

MR. SIZE: I mean you get your exemption --

MR. FEEZOR: Right.

MR. SIZE: -- by getting a grant. I mean that's the way this is set up. The exemption --

MR. FEEZOR: Right.

MR. SIZE: -- you're qualifying for -- sorry -

-

MR. FEEZOR: Right, yeah.

MR. HALL: -- in this particular -- this particular statute gives you an exemption, if you qualify -- if you qualify and receive a grant. That's -- so ...

MR. SIZE: That's right.

MR. HALL: -- it's really that simple, right? I mean there's -- in the rest of the world, yes, that the --

MR. SIZE: I understand that, but I thought the prior -- the initial response to my question was that the state -- that people aren't going to have that when they apply. So, therefore, they're depending upon having somebody from the state.

MR. FEEZOR: And, I --

MR. SIZE: To be able to apply.

MR. FEEZOR: -- and, Mark, I interpreted Tim's concerns to be that some state departments of revenue, or whatever the taxing entity, may not be as expeditious as they are, let's say, in Wisconsin. And, he does not want -- you do not want an applicant who has not received official tax-exempt status from their state entity. Even though -- state revenue -- if that is required, to be ruled ineligible.

And, so, I was trying to come up with some sort of language that said something along the lines of, "If a state has ..." --- which I thought this said, but to be clear in Tim's mind. "If an entity has filed under the appropriate not-for-profit statutes, and made application, where necessary, to the state department of revenue for an affirmation of that status, they are eligible to apply." Does that get us there, Tim?

MR. SIZE: Yep.

MR. FEEZOR: Let's try to work some language on that.

MR. OEMICHEN: Okay, we'll work on some language.

MR. FEEZOR: Yep.

MR. HALL: Anyway, I just was going to go back to the language Barbara read, which I think is good language, and so, I think we should adopt it.

MR. FEEZOR: Okay.

MR. OEMICHEN: I'm fine with it too.

MR. HALL: Taft-Hartley's. How do we --

MR. SIZE: I mean I (inaudible) --

(Off Mike)

MR. HALL: Oh, I'm sorry.

MR. FEEZOR: I -- anybody -- the language that Barbara Smith was kind enough to read -- can read again, that would be: "To be eligible to apply for loans and grants, under the co-op program, the applicant shall have legally formed the relevant non-profit, not-for-profit entity or organized, as a public purpose entity, under the appropriate and relevant state law.

This could include, for example, non-profit cooperatives. The entity will present, to the Secretary, evidence of such organization, at the state level, with the application for funding under the program." Nodding? All right. We'll take that as

adopted.

MR. OEMICHEN: Consensus.

MR. FEEZOR: Go ahead. Bill?

MR. OEMICHEN: Okay. Taft-Hartley, praise that issue, third time, that was brought up. Did you want us to bring up public testimony questions that would relate to this, at this point?

MR. FEEZOR: If you -- yes, if you -- yes.

UNIDENTIFIED MAN: (Inaudible) the Board.

(Off Mike)

MR. OEMICHEN: What's the Board want to do, a Taft --

(Crosstalk)

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. OEMICHEN: I think your -- your points that you made, Mr. Chair, are well founded in that this -- the statute's directed toward small employers, individuals. And, at least in my concept, a lot of the Taft-Hartley trusts that I've worked with, they've tended to be much larger entities than that. I'm not opposed to Taft-Hartley trusts, by any stretch, but I'm

just wondering how they fit within the requirements of the statute, where the money's supposed to be directed.

UNIDENTIFIED MAN: As a member of the governance sub group, I agree with that. And, just deeming them to be eligible -- an eligible entity, seems to not just transcend, but be in violation of the clear intent of the statute. That does not preclude them from establishing a not-for-profit, and having governance for this activity that -- you know, I mean they would have to come in under these -- you know, the other provisions, it seems to me.

MR. FEEZOR: Yeah. I heard the testimony as being more -- they wanted more affirmation of the specific ability to participate in. We've said there might be a lot of organizations that, in fact, may participate in the forming of these things.

UNIDENTIFIED MAN: Right. And, as you point out, Mr. Chairman, we did have a provision that's indicated they are not prohibited, they are not an issuer, if they did not issue coverage in the small group and individual market. So, that -- it seems to me, that provides adequate clarity on that front.

MS. NOVAK: And, that was my question. If they already existed, and they were already providing some type of insurance, self-insurance, would that preclude them from participating?

(Pause)

MS. NOVAK: Not if they're self-insured, only if they're insured. So, if they were self-insured, okay.

MR. FEEZOR: Next issue, Mike?

(Pause)

MR. FEEZOR: Bill?

MR. OEMICHEN: Next issue was the one raised by Paul Hazen (ph) and I haven't seen language at this point. And, that was -- I was just trying to find the page here, because unfortunately, my page marker just fell out, but was dealing with the -- if you have -- pardon?

UNIDENTIFIED WOMAN: Page seven.

MR. OEMICHEN: Page seven, thank you. Page seven.

(Laughter)

MR. OEMICHEN: And, that's at the bottom of

page seven, number five. If the applicant -- excuse me -- "If the applicant determines that non-member represents or comprise a significant minority."

I think there was a concern on the part of the National Co-op Business Association that that might be read to suggest that -- I'll use their word -- a substantial portion of the Board might be non-members, and does that fly in the face of the statute, and does that cause a concern?

I pointed out to Mr. Hazen that this is a significant minority of the Board of Directors, and we spell out elsewhere in our requirements that a substantial majority of the Board must come from the members, who purchase the insurance from the cooperative. And, then, we -- I thought we were actually strengthening this by putting in that "the applicant demonstrate how the co-op will maintain strong consumer focus and control."

So, we shared the same concern that he did, or that he has, and that we added in the additional language that's at the bottom of page seven, to say that there has to be a positive showing to HHS, as a

part of that application, of how we'll maintain that strong consumer focus.

But, the reason why we were recommending to the Secretary to allow certain non-members to serve on the Board of Directors, as a minority, was to make sure that we could get that expertise that we would need to get, to ensure that the cooperative could be successful. And, that if we didn't allow that, then those groups may not choose to participate in the co-op formation. Rick? Oh, I'm sorry, Mr. Chair.

MR. CURTIS: I agree with everything Bill says. He apparently had this language and thought there should be a specific language change, and was going to give that to us, Mr. Chairman, could we ask him what that -- so, maybe we were missing something here. I don't know what it is.

MR. OEMICHEN: And, I see Adam Schwartz here, but I don't see Paul, so ...

MR. SCHWARTZ: I was planning to do it at lunchtime.

MR. OEMICHEN: Okay. Like I was, yes, okay.

MR. CURTIS: Hey, we're getting --

(Crosstalk)

MR. OEMICHEN: Maybe we can just reserve that -- that small issue.

MR. FEEZOR: I've got the sneaking feeling, Bill, we're -- you're going to be our first course after lunch too, so ...

MR. OEMICHEN: I hope not. And, I think I ran out of my list. So, I'm sure they're other things, and Allen and Barbara, you were taking notes, too. I want to make sure that I haven't left anything out.

MR. FEEZOR: Mark?

MR. HALL: Well, Rick was first.

MR. CURTIS: Oh, okay, sorry. Well, okay. So, one thing you raised -- Bill, that was a great rundown by the way, for scrambling. Item 10, was where we were going to insert the bullet points from the last minutes. Okay, so, is that something that needs further discussion or ...

MR. FEEZOR: Oh, absolutely, when we say we were going to, it was, suggested among two of you this morning that we were going to do that. This group gets to decide in public form. So, Mark --

MR. HALL: No, no, Bill said it in his presentation.

MR. FEEZOR: Yeah, all right. You might want to pull up the section, highlight it, and give a brief explanation.

MR. OEMICHEN: Right.

MR. HALL: As a reminder, are we clear what we're talking about?

MR. OEMICHEN: I think -- yeah, I'm not sure I'm clear. Go -- say that again.

MR. HALL: Okay. All right, so --

(Crosstalk)

MR. OEMICHEN: I've taken notes at the same time.

MR. HALL: Right.

UNIDENTIFIED WOMAN: They're in the minutes.

MR. HALL: All right, so, in the minutes --

MR. OEMICHEN: Yep.

MR. HALL: -- from the last meeting --

MR. OEMICHEN: Oh, yeah. Oh, I think we're clear on that. Yes, I raised that twice now, that we're going to make sure to go back to get your prior

comments.

MR. FEEZOR: We need to do it in public form.

UNIDENTIFIED WOMAN: Yes.

MR. OEMICHEN: Right.

MR. HALL: Is now the time to do that?

MR. FEEZOR: Yes.

MR. OEMICHEN: Sure.

MR. HALL: Okay.

MR. FEEZOR: Yes.

MR. HALL: All right, so, in item 10, I would like to take the three sub bullet points from the --

MR. FEEZOR: Page --

MR. HALL: -- minutes --

UNIDENTIFIED MAN: What page?

MR. HALL: -- under the subcommittee on governance -- it's page two of the minutes.

MR. OEMICHEN: Fifty-five, page 55.

MR. HALL: Uh-huh.

MR. FEEZOR: Yes.

UNIDENTIFIED MAN: Page what?

UNIDENTIFIED MAN: Fifty-five.

MR. FEEZOR: Page 55.

MR. HALL: Oh --

(Crosstalk)

MR. FEEZOR: In the comprehensive.

MR. HALL: -- fifty-five -- it's in this -- okay, so -- so -- I have the minutes -- okay, so, of the four main bullets, the last -- the last main bullet that has three sub bullets. I basically, would like to take that point and insert it in item number 10 on page nine.

UNIDENTIFIED MAN: That's the (inaudible) --

(Off Mike)

MR. HALL: So -- well, these -- that main bullet with these three sub bullets, basically, is only sort-of, alluded to. I think we were -- it meant to be quite specific about various types of relationships that are either permitted or prohibited. For instance, the co-op can't be owned by for-profit, but it can partner or joint venture with --

MR. OEMICHEN: Right.

MR. HALL: -- a variety of arrangements. And, so, I think this gives it much more clarity, to potential applicants, in terms of what they're allowed

to come forward with, as a proposal, and what they're not allowed to come forward with. And, we had wanted to give that clarity and --

MR. OEMICHEN: Right.

MR. HALL: -- and so -- and, for some reason, these points didn't make it into the final recommendations from the subcommittee. I guess we sort-of had thought we'd already done that and it just -- I think it was more of a clerical error that didn't get it into the subcommittee report, so ...

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. OEMICHEN: Exactly.

MR. FEEZOR: We've heard Mark's motion, which would be to take the last bullet and the three sub bullets on page 55, dealing with applying entity and the various entities that they can relate to, and make that a part under section -- fall under section 10.

UNIDENTIFIED MAN: Yeah, yeah, yeah,

MR. FEEZOR: All right, speaking on the proposal, Donna?

MS. NOVAK: I just have a question about this.

This partnership or joint ventures will, be allowed -- can those be for profit? I mean just the way this read.

MR. HALL: Ah, yes.

MS. NOVAK: As long as we're taking it out of the context here --

MR. OEMICHEN: Right.

MS. NOVAK: -- because it'll lose its context.

MR. OEMICHEN: But, that's how we had the language that we had adopted previously. That the appropriate benefits accrue to the co-op members. So, that in the allocation of the profits, the correct amount of profit that is -- would be allocable to the co-op, as the partner, would go to the co-op and its members.

MS. NOVAK: Okay. I have to take a second and read this out of this context.

MR. OEMICHEN: Yeah.

MR. HALL: Let me -- on the point of context, I didn't mean actually, the main bullet. The main bullet should not, be carried over, that's the point we just discussed in item seven, it's just the three sub

bullets.

UNIDENTIFIED MAN: Just the sub bullets.

MR. OEMICHEN: Right, just the three sub  
bullets.

(Crosstalk)

MR. HALL: Need to be, carried over.

MR. OEMICHEN: Right.

MR. HALL: That does put them in a separate  
context --

(Crosstalk)

MR. OEMICHEN: And, I did suggest that --

MR. HALL: -- and so, we need to review to  
make sure it carries over correctly.

UNIDENTIFIED MAN: Okay.

UNIDENTIFIED WOMAN: Yes.

MR. CARLYLE: Dave Carlyle.

MR. FEEZOR: Dave, you're up.

MR. CARLYLE: You know, I'm looking at page  
55, the last one, "Partnerships or joint ventures will  
be allowed so long as appropriate benefits accrue to  
co-op members." Does that get back to the earlier  
discussion we had about sibling --

MR. OEMICHEN: It does --

MR. CARLYLE: -- interactions? And, I guess I just don't want to be -- cross-purposes with something else we say later on in the discussion. Is there -- are we talking about two different situations, or are we just talking about the same situation, in two different parts of our discussion?

MR. HALL: The latter. It does anticipate the sibling situation. So, yes.

MR. OEMICHEN: Now, we -- we do have to work out that sibling issue yet, to get full clarity of this one.

MR. FEEZOR: Further follow-up question, Dave?

MR. CARLYLE: I just want to make sure, at the end of the day, we're all consistent throughout the report.

MR. FEEZOR: Keep --

(Crosstalk)

MR. OEMICHEN: All right, that's your job.

MR. FEEZOR: I started to say, keep that hope alive.

MR. OEMICHEN: We assign you that task.

(Laughter)

MR. CARLYLE: Yeah.

MR. FEEZOR: Barbara?

MS. YONDORF: Yeah. Can I just ask? I always like knowing on the (inaudible). Can you just give me an example of a partnership, or joint venture, that would be allowed, or the reason for saying this because it gets close enough to the line that we need to -- like what exactly are we talking about? I'm a co-op and I do want to get together with a for-profit, so that we can -- we can sell insurance in the large group -- what is this getting to? An example?

MR. OEMICHEN: And, I'm not sure I'd be the best person to give you an example of that. I'm just thinking in terms of physician practice group, where they might have an interest in doing a partnership with a co-op. Other types -- where you going out and getting specific types of expertise, but I'm not sure I'd be the right person. This wasn't language, frankly, that I brought forward, and I'm not -- at this point, I can't remember the origin of it either.

MS. YONDORF: Yeah. I certainly think of some

examples where it could be abused.

MR. HALL: Oh, absolutely.

MS. YONDORF: And, so I don't -- a little concerned that there's this slippery slope here. And, to say that the appropriate benefits have to accrue, you're going to need a forensic accountant to prove that.

(Laughter)

MS. SMITH: That is not intuitively obvious.

MR. FEEZOR: Mike?

MR. PRAMENKO: Well, as a physician in a community that has physicians that are for-profit, that formed a non-profit insurance company 30 years ago, that relationship has worked just fine over the years -- you know, and so, -- and there is a partnership through contracting through those physicians, albeit the IPA is a non-profit organization.

Although, you could envision other physician groups that maybe not have that status. And, I agree, the language would have to be very clear, but we certainly would not want to preclude physician organizations who are extraordinarily interested in

moving into new integrated models, within a co-op, from applying.

So, Barbara, I hear your concern, but I think those examples are out there. And, the lawyers in the room would be better apt to write that rule than me, obviously. I'm being careful with that relationship.

MS. YONDORF: What about for-profit insurance companies?

MR. PRAMENKO: I hear you.

UNIDENTIFIED MAN: Well -- can we just jump in?

MR. FEEZOR: Yes.

UNIDENTIFIED MAN: Yeah, so, the thing with insurance, that's covered separately because you can't be -- you can't have sort-of, any sort-of relationship with a pre-existing insurance company.

MS. YONDORF: But, what if it's a new one?

UNIDENTIFIED MAN: What if it's a new one? Well, that gets to the sibling thing. So, you know, imagine, for instance, a provider group that might have some for-profit components to it, that's a large -- you know, integrated system that says, "We want to get back

into the -- you know, the business of bearing risk and selling insurance. And, we want to offer in the small individual group market and we also want to offer in the large group market."

So, we set up two new issuers. One that sells to the -- you know, and that's governed separately and meets all the qualifications. And, another one that sells in this -- these other market segments, and that sort of thing, so that you share -- you have a shared provider, or a Medicaid -- a Medicaid managed care plan, for instance, which many of those are organized in a for-profit way.

And, so, you share the administrative and the infrastructure, and the what-have-you, but you have separate capitalization. You have separate governance. And, any sort of -- the sharing of resources is done in a way that doesn't -- you know, take away from the benefit of the members.

So, that's the kind -- that's one of the scenarios. And, I think that, as far as the sort-of risk of abuse, I mean this issue has also been debated under federal charitable tax exemption law. The extent

to which charitable -- you know, exempt entities can have partnerships or own for-profit ventures, hospitals for instance, that are (inaudible) exempt entities.

And, I mean without -- you know, getting down the hole, sort-of, a legal morass of how that's defined. I think the gist here is that that's perfectly appropriate, in that arena, as long as it's for the benefit of the co-op members and not for the benefit of the -- of the for-profit.

MR. FEEZOR: I -- with two attorneys debating, and Jon and Rick second on this, and -- if you look at where we're placing it, we're placing it under the organizations that might come together to help the formation. And, it really is the team. And, I think, Mark, the way I hear you presenting this, these are the kinds of corporate structures, or relationships, for the ongoing, for the operational aspect.

And, as a consequence, it almost suggests that it needs to be back up under the sibling, the whole thing ought to probably raise to the sibling side, as I'm seeing a few nods. And, it's a good catch on staff's part on that. Bill, would you -- and if --

let's -- let me just -- if the Chair might -- if Jon and Rick will concede that we will chew on that over lunch and begin -- and come back at 1 o'clock.

MR. CHRISTIANSON: Okay. Just one support on that. Well --

MR. FEEZOR: Jon, you've been -- with that being the case, let's think about that and maybe take a fresh look at it when we come back. We will reconvene promptly at 1:00 P.M., and is there anything else we need to do, or do we need to smile here?

(Laughter)

MR. FEEZOR: Yeah, where is that being done?

UNIDENTIFIED WOMAN: Here, if you want.

MR. FEEZOR: Are they -- are they here?

UNIDENTIFIED WOMAN: Yeah.

MR. FEEZOR: Okay. Then -- we publicly stand adjourned for a few minutes. The Board here has to gather up somewhere in one corner or -- I feel like a class picture.

UNIDENTIFIED MAN: Yeah, without violating rules.

UNIDENTIFIED MAN: Yeah.

(Whereupon, the meeting was adjourned for lunch.)

MR. FEEZOR: We -- and I don't know -- any of you who have conflict of interest rules that preclude you from taking that package home with you on the plane this afternoon, just let staff know, they'll consume for you real fast.

(Laughter)

MR. FEEZOR: The personal privilege -- and Tim will appreciate this -- the peanuts are from one of, I guess, the 15 poorest counties in North Carolina, Berti County, and one that was just almost decimated by the floods of '99, and had one more recently. And, it's an underserved area, one of the first rural -- state rural health clinics that was set up by Jim Bernstein (ph) who, of course, had quite a career in that regards.

Set up -- he's from Berti and so this particular co-op, peanut growing co-op, by the way, has a -- unlike our regulations, it's county fostered. So, it was all right for the government to be involved in it, but is quite successful, and it's my way of saying, thank you folks for the privilege of serving with such

a great, great group.

So, anyway, I've got the sugar lolls sitting in here, so that we can -- we have no opposition the rest of the afternoon. Is that -- everything's good. Bill, why don't you -- let's turn -- let's all turn our attention back to the governance.

And, Bill, I don't know whether you want to take -- there was some discussion over at one of the tables today, at lunch, about some -- some of the things we were stuck on. So, do you want to start-off with that or do you want to wait with that?

MR. OEMICHEN: No, I think we might as well just take it head-on.

MR. FEEZOR: Okay.

MR. OEMICHEN: So, page -- we're still talking about page 55, essentially, from that portion of the minutes, and the bullet points that follow, the three bullet points. I think, Mr. Chair, we have consensus from those that were involved in these discussions, for the first part. The second part, we're going to have to have a further discussion.

The first part -- am I confusing you,

Patricia? You're giving me that look like --

MS. HAUGEN: (Inaudible)

(Off Mike)

MR. OEMICHEN: I don't know what the heck is up. The first part is the second bullet, where it says, "Parent company of an applicant cannot be a for-profit entity." We recommend adding in "Parent or controlling company of an applicant cannot be a for-profit entity." And, there appeared to be a consensus among the *ad hoc* working group at lunch on this.

MR. FEEZOR: Any objections to that? Okay.

MR. OEMICHEN: Perfect. Now, I need to go use the restroom, and I'll see you later.

(Laughter)

MR. OEMICHEN: Okay. The second part was not quite so easily resolved. We basically, have two differing opinions. So, I'd like to lay out two different possibilities and have a discussion on that, Mr. Chair. And, at some point, we're going to have to figure out a way to come to consensus, or take a vote on that. So, that's on the third bullet.

The first possibility is, leaving in the

language that's already there. So, "The partnerships or joint ventures will be allowed so long as appropriate benefits accrue the co-op members, and the partnership or joint venture carries out the mission of the statutes." Or, the "statutory mission" if you want to save a few words. So, that would be option one.

Option two would be, "Partnerships or joint ventures will be allowed so long as appropriate benefits accrue to the co-op members, and the partners or joint ventures are non-profit." So, putting a restriction just saying they can only be a non-profit partnership or joint venture. So, those were the two options. There are advocates on both sides of that. And, at this point, Mr. Chair, I'd propose just to have the advocates take it on.

MR. FEEZOR: Mike?

MR. PRAMENKO: Well, thanks for being very clear about what our options are, that's very helpful as far as the language, and I appreciate the work that was done at lunch. Given the first part of what you shared and came up with at lunch, on the second bullet point, I think that offers some leeway on the third

bullet point, in my opinion.

Because I think, in moving forward, some of the partnerships that are -- could be utilized out across the land, are partnerships with businesses that are really looking to save money on their health care dollar, which happens to be their biggest increasing expenditure. And, I think, given the language in the second bullet point, it allows for us to have some more leeway on what type of partnerships are developed as we look for people in certain communities.

And, in some cases, those could be for-profits that are saying, "How do we design a better system?" And, I would hate for us to have language that would preclude some very good businesses. Maybe it's some physicians, maybe it's not physicians, maybe it's businesses that have nothing to do with health care that are looking to have greater collaboration in their health system. And, so, I would vote to have the language not dictate non-profit status in the third bullet point.

MR. FEEZOR: Mike, I'm taking that as a motion?

MR. PRAMENKO: Sure, I can make a motion, if I'm allowed to make a motion after I give a speech.

MR. FEEZOR: Is there a second to Mike's motion? I know we haven't (inaudible) that. Tim -- Tim seconded. So, the discussion is in order. Further discussion on Mike's motion. Donna?

MS. NOVAK: Yeah. I think the problem that some of us have is, that once you say it and you're silent, you're implying that it can be for-profit. And, that opens up some real potential problems, and not imaginary ones, real ones that we've seen in the past, with not-for-profits, with all their best motives in the worlds, partnering with a for-profit and being derailed from original intent. Not that always happens, but it can happen.

So, maybe what we need is something that allows for a safe harbor, if you will, for a not-for-profit, but allows for a for-profit. I'm not saying that that's the only way, but that needs more approval, say, from the Secretary or state regulators. It needs much more thorough analysis and tracking, or be silent on it. You know, the Secretary, obviously, can approve

anything.

MR. FEEZOR: Rick Curtis?

MR. CURTIS: The examples given are good ones that we've talked about. This language is very broad. And, as Jon Christianson mentioned to me, as we broke last time, I think his example, if I can borrow it, is a good one. Does this allow a partnership or joint venture, with a for-profit entity, that might, itself, be, or might have a subsidiary, that's a health insurance insurer. And, the way we're wording it, it would.

And, that's different than partnering with a physician group, at least to me, it is, or with a Taft-Hartley plan or large employers, who might have a lot in common as purchasers. And, in fact, even though on the preceding bullet, I think it helps parent or controlling company, of an applicant, cannot -- well, you can end up controlling through a partnership or a joint venture.

So, I wouldn't be comfortable with this unless we clarified, and I don't know other categories we should clarify, that this cannot be with an insurer-

issued coverage before 2009, or in general, a for-profit health insurer, or parent company thereof, or subsidiary thereof. And, I -- you know, I don't -- I really don't know the boundaries of what we're potentially talking about here, and I don't know that we need this language to allow partnerships that make sense.

I don't know that we have any language elsewhere that precludes it. I do have specific language to suggest, in terms of coordinating with other purchasers, which I'll get to later, but those are my concerns.

MR. FEEZOR: Mark Hall?

MR. HALL: Yeah. I do think those are just wordsmithing concerns. I mean sure, if you just pull that one bullet out from the context of anything else, you could say, does it override all the other restrictions, but I think the intent is clear that it's not meant to do that. And, when it's put in the context of number 10, I think it becomes even clearer, but I mean the intent is here, in terms of defining the sort-of, the non-profit characteristic that we're

looking for, and that's what 10 addresses.

So, we can certainly put a *proviso* that says, "Such arrangements will not undermine -- you know, the non-profit status." And, leave it to other provisions to set the additional restrictions having to do with pre-existing insurers or state entities or any of that sort of thing. I mean even -- you know, the point about you -- can the controlling entity be -- have we guarded against control by a partnership versus a company. Well, fine, we'll substitute the word "entity" for "company," but I -- it -- you know, these are just minor tinkering's that I don't think are necessary to clarify the intent.

I think the more substantive point would be, do we do any good by putting this language in at all, because obviously the language is problematic, that's why we're talking about it to such extent. So, can we have a document that doesn't have the third bullet point in any regard. I think I might be more open to that if -- if the discussion doesn't appear to resolve itself fairly soon, because I do think we can tie ourselves up in knots, in terms of trying to define

what's a legitimate joint venture and what isn't.

I know the IRS has spent -- you know, countless decades trying to do that through numerous -- you know, rulings, and many lawyers make a good living off of -- you know, figuring all that out. But, again, all we need to do is sort-of signal that -- that there's a way in which this can be done appropriately and toss the hot potato to the Secretary to figure out the details.

But, at the end of the day, I do think there's some advantage to sending a signal that this sort of thing is permissible, simply because I think it's going to be on the minds of lots of organizers. I mean one goal here is not just to advise the Secretary, but to put a document together that gives guidance to potential co-op developers. And, if they get it -- the impression from say, bullet number two, that any involvement by for-profit entity might kill the deal. And, I think we do need to say you can't have for-profits controlling you, or owning you, that if that's all we say, then it seems to me, to suggest we'll stay away from all for-profits.

Whereas so much of the testimony was, we need to have flexible ways in which to -- you know, have -- you know, investments -- you know, partners and investors and access to various kinds of resources. That sending some kind of signal that it's okay to deal with for-profit entities in ways, other than mere arm's length contracting, I think, could serve a good purpose.

I don't know that it's absolutely essential, but I think that, at the end of the day, is sort-of the question that I think you can honestly frame. Do we need this bullet at all? And, is that need worth having to sort-of hash through all these problematic issues.

MR. FEEZOR: Barbara Yondorf?

MS. YONDORF: Yeah, I think this is a thorny issue, and so, it's hard to do thorny issues three hours from adjourning. And, I'm just wondering if we can -- it looks like the minutes are part of the record. I mean that it's in this report. And, it seems to me what we want to reflect is all the things that we said, in a way.

I mean if there's a way to say, "We have these -- we have these concerns. We'd like to do something, but we have these concerns. We can't think of enough examples right now, on the pro and con side, although we have some in our heads."

If there's some way we could, in a rich fashion, reflect this in the minutes or someplace else, rather than trying to find the right language, right now, because I don't -- I'm not there right now, but maybe Bill or the Chair, who are brilliant at finding the right language -- you know, could figure it out for us.

MR. FEEZOR: Tim?

MR. SIZE: Yeah, I'm not sure who we should give the hot potato to, but since we just got peanuts from Bill, maybe the Secretary.

(Laughter)

MR. SIZE: But, I agree with Barbara, but I also agree with what Mark said. And, I don't want to throw either baby out with the bath water. So, I mean -- I think we may have a consensus on a sentiment. We may not, and then, the language is a separate issue.

I mean I do think we need to keep open the option that constructive, appropriate, working together collaboration between a for-profit and a co-op plan, may be in the very interest of the co-op plan, but I don't know how you put that in language. And, I understand how those kinds of situations can be abused, but because we can think of abuse doesn't mean that we shouldn't be able to allow appropriate relationships.

MR. FEEZOR: Mike or --

MR. PRAMENKO: Yeah, you know, given the testimony that we heard on -- again, I reiterate Mark's point about the importance of capital, and getting partnerships at the local level. I want to stand by my motion. I think we probably ought to have a vote on this, and we can always have HHS -- you know, take the final stand on it. But, I think what they came up with at lunchtime was actually pretty good, in regards to the second bullet point, how it guides the third bullet point, in regards to how much control they can have.

MR. FEEZOR: Bill?

MR. OEMICHEN: I was just going to add that, we think that the second bullet helped take care of the

vertical relationships, and to some degree, the horizontal relationships. It doesn't take care of the downstream, and that's maybe a different discussion. But, I think there was a sense at the table that we hadn't really fully defined those horizontal relationships, and which ones are okay, and which one's aren't okay. So, that'd be my only response to that.

MR. CARLYLE: Dave Carlyle.

MR. FEEZOR: Dave, absolutely, Dave, go ahead.

MR. CARLYLE: I guess I -- I'm kind of lost at the second bullet. Can somebody read what the new current recommended (sic) language for the second bullet is, please?

MR. OEMICHEN: Sure. This is Bill Oemichen. It'd be, "Parent or controlling company of an applicant cannot be a for-profit entity." So, it's adding the two words "or controlling" after "parent."

MR. CARLYLE: Okay. I mean my comment is -- I'm probably going to get -- vote "no" for this motion just because at this point, I think any statement here can be used by extension and exaggeration to go farther than I would want to go on either way. And -- you

know, I might -- right now, I'm kind of, of the mind to just leave it mute, personally. Thanks.

MR. FEEZOR: Yep, the --

UNIDENTIFIED MAN: (Inaudible) he was talking about the second bullet.

(Off Mike)

MR. FEEZOR: It was in -- yeah, I --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

UNIDENTIFIED MAN: He was talking about the second bullet (inaudible) --

(Off Mike)

UNIDENTIFIED MAN: Against the change? Okay.

UNIDENTIFIED WOMAN: Yeah, I just --

MR. FEEZOR: Yeah, Donna?

MS. NOVAK: Let's clarify.

MR. FEEZOR: We'll clarify before we take a vote. Donna?

MS. NOVAK: Okay. Yeah, I guess I would say that, by saying, in the third one, that it can be for-profit, we're going a little bit further by saying that -- you know, maybe we don't say -- I don't know.

Anyway, I don't think if we can -- if we have such a disagreement on this, we should put it in stone, even though, in -- the record shows all the pros and cons, but I'm not comfortable with saying yes, you can do it, or you can't do it. Yeah, you want to read it, Bill, that might be helpful again, since we're having a hard time keeping this in our minds.

MR. FEEZOR: You're reading both -- all three of the bullets, which as -- with the third one being as proposed by Mike.

MS. NOVAK: Yeah.

MR. OEMICHEN: As proposed by Mike, right. Okay. So, the first bullet hasn't changed. It's saying, "Entity could own any legal subsidiary with controlling interest and proceeds to the parent."

Second bullet, as modified, is, "Parent or controlling company of an applicant cannot be a for-profit entity." And, then, the third bullet, if I understand Mike's motion correctly, is, "Partnerships or joint ventures will allowed, so long as appropriate benefits accrue to the members and carryout the statute's mission." Because that was the second option

that, we had.

MS. NOVAK: Yeah, you hadn't read that part the first time, but I think that -- so, I don't know if it's part of the motion or not. Somebody's --

MR. PRAMENKO: Yes. It is.

MS. NOVAK: Okay.

UNIDENTIFIED MAN: Jon's.

MR. FEEZOR: Jon?

MR. CHRISTIANSON: Well, I was just thinking about what somebody said this morning, maybe it was you, Mark, I don't recall. But, as long as that word "appropriate" is in there, I don't think we're providing much guidance one way or the other. No matter how we rephrase the rest of it, because "appropriate benefits," I don't -- I have no idea what that means, and it gives the Secretary tons of latitude to try to figure out what an appropriate versus and inappropriate benefit would be. So, I think we're focusing on the for-profit, non-profit, but I think in the end, as long as we have "appropriate benefits" in there, it's pretty open to whatever the Secretary wants to interpret it to mean.

MR. FEEZOR: Rick?

MR. CURTIS: To me the question is not the appropriate benefit to the members. I trust that that's -- the Secretary would show very good judgment. It's who's really benefiting. Is it the partner, and who are they, and to what degree, and on what basis.

And, again, the examples most of us have used have to do with physician groups and larger employers with Taft-Hartley Plans. And, I think many of us are very comfortable with that kind of partnership. But, at any rate, at least, I would say that phrase at the end. I would suggest moving it, "for partnerships or joint ventures that further the goals of the statute." And, then, we'll be allowed -- to me, it's stronger that way and provides more protection.

Again, I'm going to suggest not precise language. I'll read you something that goes to the coordinating with larger employers or employee groups, because that's something that we've talked about. And, I'll offer that specifically, after we're done with this general discussion.

MR. FEEZOR: Rick, just as a procedural

matter, if the good doctor from Colorado would consider taking that -- part of that as an amendment to his proposal, are you prepared to present that or did you want to do that as a separate --

MR. CURTIS: (Inaudible)--

(Off Mike)

(Crosstalk)

MR. FEEZOR: Well, first off, it was -- instead of the "appropriate benefits," it's "carry out the statutory provision." And, I thought I saw him nodding on that. And, if he'll take that as incorporated into his motion that's currently before us. Now, the question, Rick, is what else you had that you were going to talk about, would that be helpful here, or do you want to have an up or down vote on Mike's first.

MR. CURTIS: I'll leave it to Mike. It could be people would like this and then not want the general ones, so it might inhibit --

MR. PRAMENKO: With what you said, I'd regard that as a friendly amendment, so, it's fine.

MR. CURTIS: Okay.

MR. PRAMENKO: Well, this is just --

MR. FEEZOR: All right, so --

MR. PRAMENKO: I guess, part of --

MR. FEEZOR: So, we have, with the statute versus appropriate benefits, already accepted. Now it's an additional elaboration that you're suggesting for Mike to consider.

MR. CURTIS: Yes, and this is sort-of amending the language that the finance committee --

MR. FEEZOR: Oh.

MR. CURTIS: -- didn't like that had to do with the partner insurer not talking about insurers, but just talking about coordinating.

MR. FEEZOR: So, it's really Donna's fault?

(Laughter)

MR. CURTIS: Well, this is --

MR. PRAMENKO: Well, we're all confused because this is -- clearly related to governance at least as much as it does to finance. So, I -- sort-of talking about it maybe as the last point here, right. It would be something on the order of, "In order to enhance the potential for the co-op to better achieve

its objectives for cost effective coverage and care for its members, we would allow the co-op to coordinate with large employers and employee groups, that might help the cooperative achieve scale economies by utilizing common administrative services and provider arrangements."

And, then, the last sentence is the same except -- you know, the legislative intent language or, "both met as long as the government's financial support is isolated to the cooperative that sells in the individual and small group markets."

UNIDENTIFIED MAN: What language are you looking at?

MR. PRAMENKO: I am amending the language that you had --

UNIDENTIFIED MAN: The slide?

MR. PRAMENKO: -- offered.

MR. FEEZOR: And, it's not insurer.

(Pause)

MR. FEEZOR: Rick, can I -- may I suggest before we even ask Mike to nod on this, could you -- Annie, can you put that up on the screen. If you two -

- you and Mike -- you and Rick -- give it for a minute.  
Can you put anything up on the screen on that? Ah,  
who's connected.

ANNIE: Do you want -- Rick --

MR. FEEZOR: Rick, could you take it over with  
her and try to get --

MR. CURTIS: Well (inaudible) --

(Off Mike)

MR. FEEZOR: -- it doesn't have to be perfect,  
but just get it so we can sort-of put it up.

MR. CURTIS: All right.

MR. FEEZOR: Now, she --

(Crosstalk)

MR. FEEZOR: -- she can do it right here.

MR. CURTIS: Oh, I can -- it was the last  
slide (inaudible) --

(Off mike)

(Pause)

MR. FEEZOR: Mike, with your permission, going  
to displace that for just a minute. Bill, you got  
another one.

MR. OEMICHEN: No.

MR. FEEZOR: You've got to be kidding me.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. OEMICHEN: Chair, that was really the last unresolved question of the Governance Committee. And, don't anybody else bring any of it up.

(Laughter)

MR. FEEZOR: Let me -- other -- any other points that other people had, either on their notes or from their personal reading.

UNIDENTIFIED MAN: I hate to say it. I've got my (inaudible) --

(Off Mike)

UNIDENTIFIED MAN: Yeah.

MR. FEEZOR: Take his peanuts away from him, would you.

(Laughter)

UNIDENTIFIED WOMAN: I can take his nametag away.

MR. FEEZOR: Go ahead, Mark.

UNIDENTIFIED WOMAN: Go for it.

MR. HALL: You know it helps when you see all

this, in so well composed, narrative, in a report. New things occur to you. So, top of page seven, the end of item two. It occurred to me that we're asking for notification of changes in governance, but do we imply by that, that they're -- that these need to be approved.

So, if we're intending that changes in governance need approval, in effect, or you need to sort-of renegotiate the terms of your loan, I guess we ought to say that. So, this sort-of -- this relates to the other point I raised, under the -- I forget which section.

MR. FEEZOR: (Inaudible) seven.

(Off Mike)

MR. HALL: Which -- so, this is probably fine. So, it's more a statement with respect to intent. This applies to the information that would later -- might be used to suspend the payments. If we're notified that the governance change -- you know, compromises consumer control, or member governance, then that information could be used in an enforcement action to basically, suspend payments under the other section.

So, I don't know that we need to make this an enforcement section, as opposed to just a notification section, but I just wanted to articulate that connection with the later section and see if we all sort-of agree with that.

MR. FEEZOR: Bill, as a matter of law, when the co-op's -- many co-op's your familiar with, when they go to change their governance structure, is there a public filing or a prior authorization required anywhere?

MR. OEMICHEN: Mr. Chair and members, in most states, there is none. No prior authorization that's required other than a vote of the membership, but most of these changes would probably be in the Articles, and there'd have to be a new filing of the Articles, the amended Articles, or restated Articles of the state.

MR. HALL: But, nobody needs to approve that, you just do it and file it.

MR. OEMICHEN: That's -- the filing with the state, there's no approval by the state of those new Articles, no. Right.

MR. FEEZOR: It's a matter of record.

MR. OEMICHEN: It's a matter of record, exactly.

MR. FEEZOR: Mark's suggesting -- or I guess, first question, whether we need to have something else there. And, then, say it, as long as one understood that the information in that governance structural change, that is provided the department, could be used to -- as proof of violation of some other of the operations or loan agreement that maybe it was sufficient. So, which way did you come down, Mark? You want to do something with that?

MR. HALL: No, I just was -- if there's no disagreement with my way of understanding things, I'm happy to leave this the way it is. And, then, later --

UNIDENTIFIED WOMAN: You're going to add --

MR. HALL: -- I will add it into the other section. So ...

UNIDENTIFIED WOMAN: -- yeah, I have that down here.

MR. HALL: Good.

MR. FEEZOR: Further questions.

UNIDENTIFIED WOMAN: Terry.

MR. FEEZOR: Terry, I'm sorry. You've been too quiet today.

MR. GARDINER: Okay. Page seven, section four, in the middle of that paragraph where we say, "The remaining vote; voting participation could come from designated groups or classes such as small employers, providers, or community business leaders." It's brought up, it's been brought up in the testimony that we add labor to that list. It's a suggestive list, and I think we've had a lot of testimony that labor groups, that they see a positive role for themselves in being involved.

MR. FEEZOR: Any objection, to that, adding that as the kind of an organization that may help create these things?

MR. OEMICHEN: No, Mr. Chair, none.

MR. FEEZOR: All right, then we'll direct that to be included.

MR. OEMICHEN: And, Mr. Chair, just --

UNIDENTIFIED MAN: All right.

MR. OEMICHEN: -- one thing that was in the committee outline, but didn't make it into the text,

which some members brought up to me that we want to make sure is actually in the text report, is just the strong preference for contested board elections, to make sure that that's carried over.

MS. NOVAK: Allen, step back. I'm sorry, to step back a half step on the labor groups. That's normally large employers. Somebody mentioned that earlier, rather than small employers and individual, and I thought these were primarily supposed to be focused. Now you're saying the Board has the large employers?

(Pause)

MR. OEMICHEN: You better respond.

MR. GARDINER: I'm sorry.

MR. FEEZOR: Terry?

MR. GARDINER: I'm sorry. I was trying to read another section.

MR. OEMICHEN: Are we letting large employers onto the Board by inviting labor in?

MS. NOVAK: At least the employees of large employers --

MR. FEEZOR: Yeah.

MS. NOVAK: -- their representatives.

MR. GARDINER: Well, I mean labor would be labor, not necessarily large. I mean as a labor union as labor.

MS. NOVAK: Yeah.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. NOVAK: I --

MR. GARDINER: Yeah, I mean --

MS. NOVAK: -- I mean this point was brought up earlier --

(Crosstalk)

MR. GARDINER: I mean I think --

MS. NOVAK: -- and I think I agreed with it.

(Crosstalk)

MR. GARDINER: -- the labor union, the idea is it be -- you know, they are -- represent a lot of members and they are -- you know, members oriented in terms of health care issues.

MS. NOVAK: Yeah. Maybe what it is when it says "labor" instead of "employee" it makes it sound more like large employers and large unions, for large

employers, which of course, could also be small employers.

(Pause)

MR. FEEZOR: Well, we say "business leaders," and I guess I heard Terry to say -- I might even be union leaders, who are used to community organizing and so forth. And, I guess I was thinking about groups that would be involved in forming these entities, and yet, this is specifically with regards to the Board, which is your point.

MS. NOVAK: Board, yes, yeah.

MR. FEEZOR: And, hence, some discomfort.

MR. GARDINER: Yeah, well, I don't know. You know, my own experience, I have -- a very good friend of mine runs a health and welfare trust fund -- you know, for electricians, the IBW. You know, and the guy knows health care -- you know, because they go, really, through -- you know, you can really talk to him about health reform, because they have lived and breathed how to contain -- you know, health care costs.

And -- you know, and then, and how to pay for, in their case, they have to pay for the health plans of

retirees, a lot of the Taft-Hartley funds don't. Some do, some don't, and so, it -- you know, I -- I'm thinking -- you know, in my mind that just like these other classes of leadership, that you would -- would contribute to your board. You know, that's what comes to my mind.

I mean I'm not saying everybody that belongs to a labor union, but I'm not sure. I can tell you, most small business owners don't know much about health care, either of -- and then they deal with their broker once a year. But, -- you know, but they still might provide some business expertise.

MR. FEEZOR: Terry, I wonder if -- and thank you, particularly, for picking up, as several of us did, on some of the testimony this morning. But, I wonder if there might not be other areas where we're talking about interested parties who may be a part, or help encourage these things, that we can look for specific opportunities to mention union or labor leaders, and maybe not bind it, necessarily, in the Board. Tim?

MR. SIZE: I would go further. I think lists

like this are inherently problematic. I mean literally, I think the plain English is these are examples, so why give any examples. Why don't we just -- I mean basically, the issue that we've -- we're really hanging our hat on is, we want the members to be in control. And, we want, then, the organizers to have the opportunity to bring in whomever may provide utility to the development of the co-op plan, and then, leave it at that.

MR. FEEZOR: Obviously, in terms of member education and member outreach, the union would have some extraordinary experience in that regard. So, it's in that context --

MR. SIZE: I think they're many situations where a union would be invaluable to be -- and my point is just let's avoid lists. They just cause problems, aside from wasting the time talking about them.

MR. FEEZOR: All right.

MR. SIZE: That was -- the recommendation is just delete that list, and to simply say, you know, we recognize there could be non-members included --

MR. FEEZOR: All right.

MR. SIZE: -- that for reasons that, are thought by the developers, and the co-op plan, to add value to the plan.

MR. FEEZOR: Bill? Rick? You guy's back up? And, this is -- Mike, have you had a chance to look at the language up here?

(Pause)

MR. FEEZOR: And, so, we understand the context --

UNIDENTIFIED WOMAN: I'm confused. I don't see how that relates to what we were talking about here.

MR. FEEZOR: Yeah.

(Pause)

MR. FEEZOR: Rick? Are we -- Rick, are you suggesting to Mike that this be a -- a fourth bullet or would this be placed somewhere else?

MR. CURTIS: I would (inaudible) to the judgment of others. If he thinks, it fits here, that's fine. Again, this overlaps both governance and finance.

(Off Mike)

UNIDENTIFIED MAN: Yeah.

MR. CURTIS: The provision I was working off of was the one finance group objective, and frankly, I don't know exactly where that was meant to go.

(Inaudible)

(Off Mike)

UNIDENTIFIED MAN: As far as the placement, this originated as a collaboration on the substantially all point. It's -- I'm the one who started the ball rolling, I guess, with the original language. And, the thought was to give guidance to folks about how they could meet the substantially all requirement, and at the same time, launch a co-op -- you know, that included or partnered with -- you know, large employers. So, I think, for clarity purposes, to sort-of convey the idea more clearly, I would include it alongside the substantially all provision.

MR. FEEZOR: All right. Mike, I'm not going to put you on the spot, but I am, since we were trying to get language that might amend yours. It doesn't seem to follow as quite as coherently as I meant, but what would you like? It's yours to call.

MR. HALL: I think this -- in the spirit of what I envisioned -- partnering and collaboration at a local level, regardless of for-profit or non-profit status, I think this meets -- you know, that idea. And, so, I don't have a problem with how that's worded.

UNIDENTIFIED MAN: Where do you want to include it?

(Crosstalk)

MS. NOVAK: Is there a substitute?

MR. FEEZOR: So, I -- let me then -- it's an addition. So --

UNIDENTIFIED MAN: Where? Where does it go?

MR. FEEZOR: Just a second. Mike's proposal -- bear with me, Mike -- will be the three bullets, as defined, which are going to be amended, or added, under section 10 of the governance section. And, with that would be the paragraph that is before you on the screen that we're going to let staff, in conferring with the -- a small call of the sub chairs -- subgroup chairs and the Chair, try to determine where it best fits, rather than doing that right now. And, I'm sorry, that's a sloppy way of doing it, but --

UNIDENTIFIED MAN: No, it's all right.

UNIDENTIFIED MAN: Nope, that's the best way to do it.

MR. FEEZOR: Tim, you okay? Donna?

MR. SIZE: Yeah. So, this would -- this doesn't replace three, this is an addition to three, as we --

MR. FEEZOR: Yes, it's an addition to. So, we've got the three bullets, with some wording change, that will go in 10. And, then -- but, as a part of the motion we'll be approving this paragraph that would then -- and I don't know whether it'll go in finance or whether it would go somewhere else, in governance, but we're just -- we're not going to search for it right now. We're going to put that to the discretion of the staff with the approval of the -- what I call the drafting chairs. Barbara?

MS. YONDORF: Are those two separate motions or one?

MR. FEEZOR: We're doing it as one, but it's -

-

(Crosstalk)

MS. NOVAK: That --

MR. FEEZOR: -- (inaudible) need to split?

(Off Mike)

MS. NOVAK: Well, personally, I like Rick's language, and I don't have a problem with it, and I -- I, personally, still have a problem with the third bullet point of Mike's three.

MR. PRAMENKO: I'm happy to withdraw that motion, if this is included in there. As I said, this is -- I believe meets the spirit of what I'd like to see as advised. And, so, with this going in as a bullet point, I'd withdraw my motion, if that makes it --

MR. FEEZOR: You are dropping the three -- you are dropping the three bullets and substituting this?

(Crosstalk)

MR. PRAMENKO: If that would garner the support of my colleague from Colorado, I would certainly do that.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. NOVAK: Yeah, absolutely.

UNIDENTIFIED MAN: Yeah.

MS. NOVAK: I would like to be a second sponsor on the replacement of my colleague from Colorado.

MR. CARLYLE: All right, Dave Carlyle.

MR. FEEZOR: Go ahead, Dave.

MR. CARLYLE: The webinar is not operating, so I'm not getting the Board's language. Could anybody kindly read that to me, please?

MR. FEEZOR: Can somebody -- Bill, you read it.

MR. OEMICHEN: Sure, I'd be happy to do that. This is the proposed recommendation, and it is as follows: "In order for the co-op to better achieve its objectives for cost effective coverage and care for its members, a co-op may coordinate with large employers or employee groups who could help the co-op achieve scale economies by utilizing the same administrative services or provider arrangements. Legislative intent and language are both met as long as the government's financial support is isolated to the co-op." End of sentence.

MR. CARLYLE: Thank you.

MR. OEMICHEN: Yep.

MR. FEEZOR: Tim?

MR. SIZE: My colleague, Ben, has been trying to (inaudible)

MR. FEEZOR: Donna?

MS. NOVAK: One, I'd like to know, in that paragraph, what the word "coordinate" means.

MR. CURTIS: I was trying to be precise about what you'd be coordinating, and so -- and rather than exactly how you might coordinate. Coordination might take different forms, but so long as it had to do with these other purchasers in the same geographic area, using the same administrative services and paying their portion of it, which would be an administrative services vendor, which may be a TPA, or may be from marketing, or whatever it is.

And, by provider arrangements, I mean -- you know, that the contractual arrangements, in terms of what the providers are paid for, how they're paid, what services they will provide under the contract, could be coincident between the two, so that you have an elegant

consistent set of incentives for the providers, rather than incompatible, so as, to achieve systems change.

But -- you know, I don't know of a more precise word than "coordinate" that might not be counterproductive by trying to predict what's going to work, or what's not going to work. I could imagine it working different ways.

MS. NOVAK: So, you're seeing them partner with them for bargaining purposes, that's what coordinate means.

MR. CURTIS: I guess that's how it could be viewed.

MS. NOVAK: You know, because obviously, they can buy services from the same TPA.

MR. CURTIS: I mean I can imagine in Colorado, I know of a primary physician group. You wouldn't have to bargain with, that they would happily arrange -- you know, be happy there's two entities that want to do this, rather than just one, and it wouldn't be hard bargaining, but -- and, I can imagine a TPA giving both of them a better price, per member, because of volume. And, in that sense, bargaining, but I would not be

comfortable with substituting the word "bargaining" rather than "coordinate."

MS. NOVAK: I don't know if there's a common definition of "coordinate" in a business sense that -- where you could find that.

MR. CURTIS: I guess we don't view this -- to me, that's a good thing not a bad thing, because I don't want to try to predict what would work well here.

MR. FEEZOR: Tim?

MR. SIZE: Yeah, in my -- you know, I'm trying to find a way to ask this question without sounding cute and I can't. Insurers are large employers, was it your intent to include insurers as large employers, which I would actually like to see, but I am -- because I don't think we can duck the issue. If it's not your intent, I think it would need to be explicit in the statement that large insurers are not included.

MR. CURTIS: Exactly. I think rather -- without wordsmithing it, I think, consistent with the statute, that the intent of the statute should not include insurers that --

MR. SIZE: So, is your position that the

statute precludes any, and all, working relationship with existing insurers?

MR. CURTIS: It -- the TPA could be an insurer, purely under the statute, and it could contract, but in terms of sort-of coordinating as a partner, if the insurer was bigger than the co-op, which it almost certainly would be almost all the time. You have to wonder who's really in charge. So, to me, you would -- you know, the --

MR. SIZE: I --

MR. CURTIS: -- insurer's role would be as a contractual agent for administrative services, not as this kind-of coordinative partner, but I will go with the recommendations of the Chair in this regard. I guess I think it would be a good idea to clarify that this could not be an insurer that issued before 2009 (inaudible).

MR. FEEZOR: We can certainly do that in a drafting note, if we feel it's required. Donna?

MS. NOVAK: I think I've lost my thought. Oh, yeah, it was -- what problem are we trying to solve with this again? Is it the substantially all, is it

the critical mass?

MR. FEEZOR: Let me start out. I think my good friend from North Carolina started us down this. When we had eliminated, between the last meeting and this meeting, some of the positive directions that were set forth in our recommendations, I want to call it creativity, that would allow co-ops to, in fact, engage with other corporate entities in the range in which they may do that.

And, the wording of that faltering primarily on the "for-profit" or "not-for-profit" entity that you could partner with, is where we really sort-of ran aground. And, in the search for a little calmer waters, we were substituting this, which yes, does touch on, in fact, was originally created to be a part of the substantially all about how co-op's might relate to existing entities, or other entities, that might provide them the scale or needed services. Rick?

MR. CURTIS: And, I would just clarify, perhaps, to say this. I think where this is most important to allow is, in areas where there really is an opportunity to work with providers towards

integrative systems of care. And, to think that you can really do that well, with just whatever new membership the co-op will get, in its first couple years, from only the individual and small group markets, is probably wildly optimistic. And, that by this kind of partnership, I think those kinds of systems improvements are much more likely, and it's worth stating that this kind of coordination would be allowed.

MS. NOVAK: Maybe we should look at the more detailed section on substantially all, then, and see -- which we'll talk about in the finance anyway, because that was on the list to talk about in the finance section.

MR. FEEZOR: Bill?

MR. OEMICHEN: I would like to make this in the spirit of a clarifying comment, as opposed to one that's going to make things a little bit more confusing. But, if we go back to the third bullet of the governance section, so, section 10. Would this help, at least from the perspective of informing HHS of what our concerns are? So, could the bullet read as

follows, and I am, actually a parliamentarian, but I'm not -- your motion, I think, is still on the table.

But, at least I'm going to offer this, and say, "The partnerships or joint ventures will be allowed so long as the appropriate benefits accrue to co-op members ..." -- or I think there was "... and carry out the ..." -- right, "carries out the statutory language."

And, then, I would add, "The Advisory Board cautions the Secretary to ensure its review, focuses ..." -- and this is reviewed both at the time of application and later on in the other reviews that we put in. But, "... it's review focuses, in part, on potential abuses that may be caused by the partner controlling the partnership, or joint venture, for its benefit, and where -- and to the ..." -- let me say that over again. Excuse me.

"The Advisory Board cautions the Secretary to ensure its review focuses, in part, on potential abuses that may be caused by the partner controlling the partnership for its benefit, and where it is to the detriment of the co-op and its members." So, at least

we lay out and inform the Secretary that we have these concerns that there are potential abuses.

We don't know how to define what all those abuses are right now, but at least we make the Secretary aware. And, will that get us past our language barrier that we seem to have, at least, on this third bullet.

MR. FEEZOR: And, I'm hearing your concern that there may even be a few not-for-profit's who, in fact, may dominate and take it away from --

MR. OEMICHEN: Absolutely.

MR. FEEZOR: -- a statutory purpose.

MR. OEMICHEN: That's correct.

MR. FEEZOR: Donna?

MS. NOVAK: In thinking about this and 14 other things all at the same time, it occurred to me that really, my problem with this was that we talk about not-for-profit in the -- in the first bullet. Not the sub-bullets, the first bullet, and in the second sub-bullet, but we don't -- we're silent on the other two, which implies that it could be for-profit. It almost, in invisible ink, says they can be for-

profit. But, I like your language because it gives our caution. It passes our caution on to the Secretary, and without saying, "You have to do this, or you can't do this." So, I like it.

MR. OEMICHEN: Thank you.

MR. FEEZOR: I'm seeing some nods around the table, and I think the process to move us forward, Mike, would be, you had sort-of pulled back in order to get your colleague from Colorado on board, going with this instead of the three bullets.

What Bill has just proposed is, in fact, some clarifying language, either in the third bullet, or as a footnote to the bullet, saying to the Secretary, "Look, we think where there's some opportunity, there's opportunity for abuse, whether it be for-profit or not-for-profit and we just need to be cautioned creativity to carry out the purposes of the statute."

So, I guess the question then, Mike, would you like to consider accepting Bill's suggestion that we go with the -- again, the three bullets with his clarifying language, or something roughly thereto.

MR. PRAMENKO: In the spirit of keeping the

ball rolling, absolutely, yes.

MR. FEEZOR: Hey, it hasn't rolled very far,  
but --

(Laughter)

MR. FEEZOR: -- so -- and that does not --  
that's not down vote on this language, Rick. This, as  
I think, Donna said, is probably a little bit more back  
on the substantially all issue. So, we'll hold that in  
abeyance. Dave, are you still with us on that one?

MR. CARLYLE: I think I am. I just would  
have, when we call for a vote, I would like the  
language specifically stating what we're voting on, or  
enough so I can be on top of it.

MR. FEEZOR: All right. I'm going to have  
Bill do that in just a second. And, I was -- that was  
being a little unfair. The rest of us aren't sure  
anyway, I don't know why you should be.

(Laughter)

MR. FEEZOR: But, no -- I don't see any other  
cards up, and unless Bill stumbles, in reading it,  
we're going to take a vote here in a second.

MR. OEMICHEN: I'll try not to stumble, but my

-- I'm left-handed and that has limitations.

UNIDENTIFIED WOMAN: Could you just read it slowly?

MR. OEMICHEN: Pardon?

UNIDENTIFIED WOMAN: Just read it slowly.

MR. OEMICHEN: Okay.

UNIDENTIFIED WOMAN: Please.

MR. OEMICHEN: Okay. So, taking all the other language that was already on there, this would be added language. "The Advisory Board cautions the Secretary to ensure its review focuses, in part, on potential abuses that may be caused by the partner controlling the partnership for its benefit, and where it is to the detriment of the co-op and its members."

MR. FEEZOR: Rick?

MR. CURTIS: We had -- earlier, when we were on this point, talked about prohibitions for that being the applicable insurer prohibitions. Are we still planning to add that?

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

MR. FEEZOR: Nothing there would preclude the

prohibitions against the pre-existing issuer.

MR. CURTIS: Yeah. Well, being a partner.

And, this is different.

UNIDENTIFIED WOMAN: Yeah.

MR. CURTIS: I mean unless we say it. Unless we say it --

MR. FEEZOR: Okay.

MR. CURTIS: -- those prohibitions don't necessarily pertain.

MR. FEEZOR: Mark?

MR. HALL: Every time we allow something, we could, but I don't think we need to remind everybody that we're not overwriting all the other prohibitions. So, I mean there's also prohibitions on government entities and prohibitions on -- you know, selling to large employers. And, so, each time we allow one thing, we could go and remind everybody of the other four things that we're not allowing, but I just don't see the purpose of all that.

MR. CURTIS: Well, you're the law professor. I'm not, but here we're talking about who the partner is, not who the co-op is. All those prohibitions have

to do with who the co-op is or isn't. This language would suggest that it would be just fine for the partner to be those insurers who are prohibited from being the co-op. Those insurers can clearly have an arm's length contract, and we've said that they could, but unless we make it clear those prohibitions pertain to who the partner is here, I think it's implicit that we're saying it would be fine. So, I think it's important to clarify this and I believe everybody would agree that that's not who we have in mind being a partner here.

MR. FEEZOR: Barbara?

MS. YONDORF: I guess -- let me say this. It seems to me -- I guess what I like about Rick's language is, that it captures the major thing that we know we're trying to get in. I mean that's what I've heard.

I've heard, "Wait a second, we do want to let providers in. We do want to let large employers in, to give ourselves a stronger base." So, I'm comfortable -- you know, with language that is so clear about, "This is what we want," as opposed to our attempts to have

something fairly broad.

And, now, we're trying to think of the examples of things we better say -- say "no" to. So, I'm -- I mean I will go happily with the will of the group, but I just want to point out why I sort-of prefer -- prefer this approach.

MR. FEEZOR: (Inaudible) that would still be on the floor --

(Off Mike)

MR. FEEZOR: Further comments on the proposal and the question raised is -- Rick is raising, is, whether there needs to be any -- or has raised, is whether there needs to be any additional language that explicit -- makes it explicit that insurers are not considered to be a partner. And, Mark has noted that elsewhere, we preclude insurers from being issuers or whatever we call them, from being a co-op eligible and therefore, it should apply to this as well.

MR. OEMICHEN: Mr. Chair, if you want to do that that almost really needs to be a separate bullet rather than trying to tack it on, because I'm trying to just caution the Secretary on the potential abuses

here. I don't want to put all sorts of other contingencies on that.

MR. FEEZOR: Well, why don't we say, along the same line that the -- that the Board had concerns that if a partner was, in fact, a major issuer, that a lot of the efforts that went into this law to change the dynamics would not be -- or something --

MR. OEMICHEN: Right.

MR. FEEZOR: -- would not be achieved, and therefore, caution that as well.

MR. OEMICHEN: Right.

MR. FEEZOR: It doesn't prohibit.

MR. OEMICHEN: I'm kind-of along Mark's line. I think it's already stated in the document, but --

MR. FEEZOR: Okay.

MR. HALL: I think I -- let me suggest this as a solution. If we made clear that all we're addressing here is, whether these arrangements undermine non-profit status, which I think is all we meant to address, because that's what the major bullet is. The major bullet, which no longer carries over with this, is that you must be a non-profit. By the way, dude,

dute, dute.

So, now, in 10, we start out, again, by saying, "You must be non-profit." And, then, a sentence or two later, boom, boom, boom. So, one way to make sure that all this is only within that context is simply to say, in the third bullet, friendly amendment.

Instead of saying, "Partnerships or joint ventures will be allowed," let's just say, "Partnerships or joint ventures will not undermine non-profit status ..." or "... won't negate non-profit status, so long as they advance the purpose of the statute and the appropriate benefits accrue to the co-op members ..." Etc., etc.

So, I mean it is our intent, and it reminds the reader of the bullet being within the subsidiary context, rather than a free-floating principle that overrides everything else in the document. So, the precise suggestion is to friendly amend the standing motion so that the phrase will be allowed, as replaced with the phrase, "... will not negate non-profit status ..."

MR. FEEZOR: Donna?

MS. NOVAK: Okay. My original comment was prior to Mark's, but I'll make a comment on Mark's. I think that -- I think there's a whole lot of meaning in what you just said that a law professor understands, and not a finance person. I think that there -- that's pulling in some areas of law where it would say, "Well, it won't negate my non-profit status, so I can do a whole body of things that I don't understand what they are."

You know, just -- you were saying earlier that there's some -- there's a lot of law around what negates your non-profit status and what doesn't. Some of the things that might not negate your non-profit status might be the things that we're thinking of we don't want to allow. I really like the idea of going with what Bill says and cautioning the Secretary and not trying to micromanage it beyond that.

You know, letting the Secretary decide what the intent was, if a particular transaction -- you know, in front of the Secretary, is -- and, by the way, I like the idea of footnote, but I'd like it for the

first bullet and the third bullet. The downstream can be problematic too, for both of them, a point of caution.

UNIDENTIFIED MAN: Of controlling the entity?

MS. NOVAK: Yeah, controlling or siphoning -- having problematic issues.

MR. FEEZOR: Rick?

MR. CURTIS: I might suggest that we first vote on the bullet and the first two sub-bullets, which I don't think anybody has any problems with at all, and then, just so we don't have to revisit this if it goes to town, and then vote on this third bullet as amended by Bill, just a procedural suggestion.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

(Laughter)

MR. CURTIS: Well, we first all agree we don't have to vote on the second one, that was agreed upon, correct, Bill?

MR. OEMICHEN: We did agree on that by consensus.

MR. CURTIS: So, yeah, so -- and then the

third one has been changed five or six times now, and what I had agreed on was to remove -- with Barbara's request, to replace the third, I believe, with what's up on the screen. And, so, what the standing motion, I guess, would be, would be that's --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. CURTIS: That's where we were at one point, is my understanding.

MR. FEEZOR: That's where I thought I twisted his arm to get the third bullet back up, as amended by Bill.

MR. CURTIS: And is -- so, if -- and that's fine with me, but Barbara might have a problem with that. No? Well, then, we can vote on the third, it sounds like, and with the addition of the proposed amendment that Bill has come up with.

MS. YONDORF: Yeah.

MR. FEEZOR: The question, then, will -- has been called, and Bill, if you'll read the motion and it's third bullet only.

MR. OEMICHEN: Okay.

MR. FEEZOR: As amended.

MR. OEMICHEN: I'm not sure I got all the language in the right place for the first part of it, but, "Partnerships or joint ventures will be allowed so long as appropriate benefits accrue the co-op members and carry out the statute's mission ..." -- or --

MR. FEEZOR: I think we did --

MR. OEMICHEN: -- "... carry out the further goals ..." --

MR. FEEZOR: -- as long as carrying out the statutory purpose --

MR. OEMICHEN: Yeah --

MR. FEEZOR: -- or something like that.

MR. OEMICHEN: -- "... carry out the statutory purpose ..." And, then, the language I offered, which is, "The Advisory Board cautions the Secretary to ensure its review focuses, in part, on potential abuses that may be caused by the partner controlling the partnership for its benefit, and to the detriment of the co-op and its members." And, we can tweak a word or here, but that's the substance.

MR. FEEZOR: Further discussion.

(Pause)

MR. FEEZOR: All in favor of the motion,  
please say, "Aye."

ALL: Aye.

MR. FEEZOR: Opposed.

MR. CARLYLE: Aye.

MR. FEEZOR: Thank you, Dave, and  
congratulations. Now, Bill?

MR. OEMICHEN: Which way did he vote?

MR. FEEZOR: He voted "aye."

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. NOVAK: But, I thought he said "aye" --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. NOVAK: Yeah.

(Crosstalk)

MR. FEEZOR: Oh, you mean "nays?" Nays?

MS. NOVAK: (Inaudible)

(Off Mike)

MR. FEEZOR: Okay. Next?

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. FEEZOR: Yes. Anything else?

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. FEEZOR: Yes, as a part of 10. And, this will be brought up --

MR. OEMICHEN: The governance-working group is done.

MR. FEEZOR: Barbara?

MS. YONDORF: Can I just make a suggestion? Because we're on this topic, and this really goes --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. YONDORF: -- to the criterion process section, right.

MR. FEEZOR: No --

(Crosstalk)

MS. YONDORF: Or where we have --

MR. FEEZOR: -- it's finance.

(Crosstalk)

MS. YONDORF: -- substantially -- finance.

MR. FEEZOR: And, I have an "N" in yours, I

think.

(Crosstalk)

UNIDENTIFIED WOMAN: Finance, but I don't --

(Off Mike)

MS. YONDORF: Okay, but --

UNIDENTIFIED WOMAN: -- I don't know the  
details (inaudible)

(Off Mike)

MS. YONDORF: Was -- whichever section would  
be appropriate to talk about this, because we've been  
talking about it. Can we go to that?

MR. FEEZOR: All right. And, then, let's  
immediately, Bill, make it pull back up if somebody  
scratches their head and says they have a governing  
question, but Tim?

MR. SIZE: Not for the record, but I think we  
should recognize that (inaudible) can propose  
compromise.

(Off Mike)

(Laughter)

MR. FEEZOR: I started to say, you can't go  
home again.

UNIDENTIFIED MAN: But, he's the only attorney in the country who when he disagrees, sounds agreeable.

MR. FEEZOR: And, before I turn it over to Donna, and Donna, if you would, get your notes so that you can bring up the substantially all, issue first.

MS. NOVAK: Yeah, I -- go on.

MR. FEEZOR: The Chair would note that we're at 10 after 2:00 P.M., scheduled to adjourn, certainly, by 5:00 P.M., I hope. So much for thinking, we're getting out earlier. And, I guess the Chair hopes it's one of those issues we so exhausted ourselves on the first one that everything else will fly by easily, but I suspect this group's interest in putting out a sharp product will not make that possible.

But, let's do make sure we try to make our comments succinct and our issues really appropriate. And, back to our original, don't just object, come with a reasonable solution in the good Wisconsin fashion, or the new Wisconsin fashion. Donna?

MS. NOVAK: Having been born in Wisconsin and spent a lot of time there, all my family is there, I now have something more to live up to --

(Laughter)

MS. NOVAK: -- not just eating a lot of cheese. Okay. I suggest we go to page 32 and 33 because that has all of the detailed language on substantially all, and maybe even take a second to read the detail because I think we've got a lot in there that allows, I think, for the solution to the problem. And, then, maybe if we look at it, we'll see if we have to go further than this. So, let's just take a second and then --

(Pause)

MS. NOVAK: Okay. I think we could maybe, strengthen some of the examples in Item C, under H, where we do say, "policies to providers." I mean we could indicate large groups -- you know, etc., if we wanted to. So, we've got really two things.

We've got overtime and we've got the description of, how you would come up with a percentage. We have a "for example" percentage, but it's just a "for example," but a way of doing that percentage, which would be based upon policies, instead of member months. And, we thought that both of those

provisions, together, went a long way to allowing a co-op to start out by issuing policies.

Again, I don't know if that's the same as "coordinate with," but issue policies to large employers, to large provider groups, and get the critical mass that you need. And, the critical mass is needed for two things. One, for spreading fixed cost over, not variable cost, because when you go purchase, as we heard a number of meetings ago, if you go purchase ASO services, that's on a per member per month basis. And, if you go to an ASO that already has good economies of scale, you're going to get approximately the same rate, but it's your overhead, and for meeting your solvency requirements.

And, for meeting your solvency requirements, every licensed entity -- and that was kind-of one of the problems, was the original language that was a "sibling insurer." Every licensed entity has to have their own capital. So, now that we've taken "sibling insurer" off -- you know, we could look at other solutions that have that contribution to surplus and to solvency.

So, that's really the two things that I think we were concerned with, the substantially all, the critical mass, and sharing the overhead cost, and the - - and building up the solvency requirements internally.

MR. CARLYLE: Dave Carlyle, when its appropriate.

MR. FEEZOR: Dave, go ahead.

MR. CARLYLE: Yeah, I'm just going to get back to the topic I've raised before, and I know Rick has raised it, and under that part "C" Donna talked about. To me, there's just a major difference in quality, in - - you know, in relationship to the provider's -- you know, having the co-op offering coverage to the providers in the integrated care network, versus any other group, just because of the availability -- just to the need to have motivation to actually get things done. And, if there's any way to kind-of separate out that -- that from -- that from any other group being offered -- you know, the Secretary allowing for groups to come in early on to help.

I just think there's a difference there that - - to lump the two entities together, non-provider

groups plus provider groups, I think, doesn't reflect real life experience, in my mind, of how a provider group -- you know. If you have a provider group as part of your co-op, you just -- it's going to motivate everybody to make sure that co-op works much better. Thanks.

MR. FEEZOR: Mark?

MR. HALL: Yeah, I've just got a couple questions that would help me understand -- you know, and that explanation got me a long way down the road, but the first question is, is their intent to sort-of define differently or use differently the terms -- this gets to what -- how the phrase "issuing activity" is defined. So, in terms of issuing activity, is there a difference between a plan, a policy, and a contract, because those three terms are used in somewhat different ways in the summary report and in the detailed report. And, it's not clear to me if there's an intent to sort-of draw contrast between plans, policies, and contracts, and which of those terms means something different from the other.

MS. NOVAK: I'd have to look and see how the

word "plan" is used, but typically, "plan" is definitely different than policy or contract. Policy and contract can -- I'd -- again, I'd have to look and see how the terms are used, but they're pretty synonymous.

MR. HALL: But you --

MS. NOVAK: The -- it's not occasional --  
(Crosstalk)

MR. HALL: -- suggested that somehow those are not the same as covered lives.

MS. NOVAK: Correct. A contract is -- I have a contract with GM. It's a contract with GM, it is a contract. Usually --

MR. HALL: Okay.

MS. NOVAK: -- a contract in a state, but --

MR. HALL: So, you really mean to say that an insurance contract that covers -- you know, a hundred thousand people, counts as one, the same as an insurance contract that covers one person?

MS. NOVAK: If it's a -- if you're saying the contract covers an individual person --

MR. HALL: Yeah.

MS. NOVAK: -- that came to buy an individual policy.

MR. HALL: Okay.

MS. NOVAK: Yes.

MR. HALL: So, under that definition, it would be quite easy to meet the substantially all test, because even if 90 percent of your covered lives are with large groups, it's probably the case that that's only 10 percent of your contracts.

MS. NOVAK: Correct.

MR. HALL: Okay. So, that -- if that's the case, then you're right, this is probably a non-problem, but as far as being able to meet the sort-of statutory test. But, I think that I, and perhaps Rick and others, are worried that that's not a good faith -- I mean not a good faith -- that that interpretation of the statute might be challenged.

And, the reason is that, if that then allows the grants to serve as the capital reserves, for a co-op, most of whose members are with large employers. Then, it seems to go against the grain of what -- you know, the grants are for, which is to help get off the

ground -- you know, entities that mainly serve individuals and small groups. So, that -- I'll just stick on that question, whether we all recognize that there's a sort-of a definition of -- the statutory phrase is "... issue an activity consists of substantially all of ..." -- the term in the statute, I think, is "plans," right?

And, we have to say what is "issuing activities" relating to plans, what does that mean? And, do we all agree that that means the legal contract, or does it mean the number of covered lives? And, then, if that's what we mean, then the question is, is that clearly enough expressed?

MS. NOVAK: Yeah. "Plan" would normally, not be equated to "member." It would be a contract. It would be a type of coverage. It would normally, not be equated to "member."

MR. HALL: Well, that -- that's the term I think in the statute. Let me pull the statute up.

(Off Mike)

MS. NOVAK: Yeah, without definition.

MR. FEEZOR: Rick Curtis.

MR. CURTIS: Regardless of the resolution here, I don't see that doing this, in addition, is inconsistent, and it may, in a number of areas, be more feasible to do this than that. I do share Mark's technical concern that the intent seems to be that federal funding support be going mostly for coverage for individuals in small groups, and what might end up being the case here, over time.

I get the time point. You could be -- I mean we're all aware of the specific example. A hospital system is interested in partnering. They're going to throw their employees in. Allow that, you can get the thing off the ground. And, I think that's very complimentary to these longer-term purposes.

I, again, share Mark's concern about the use of federal funds, which seem to have an intent that this is trying to creatively be creative with. In any event, I see no reason not to add something like the approach on the screen.

MR. FEEZOR: Mike?

MR. PRAMENKO: Well, Bill just looked up some of the words here, and it just says "substantially all

activities." As far as -- so, it's pretty vague. And, I think we heard in testimony early on, a couple months ago, just the sheer importance of the fact that they're going to have to go beyond small and individual groups if we're going to have any sort of significant amount of success here.

So, I think it's imperative that we do cross this line of pushing HHS a bit on this, in that we're allowing some large groups. Otherwise, we're setting up for a significant amount of failure, around the country, if we're going to restrict this to membership, as opposed to number of plans. So, I would encourage us to be pretty vigorous in this regard.

MR. FEEZOR: If -- step back a second and make some comments here as well. Boy, I probably shouldn't say this in a public forum. Probably, the language, in retrospect, is a little unfortunate and yet, as Mike just noted, it is somewhat ambiguous.

And, Mark and Rick, I don't know that I see that we are telling the Secretary that she, or the department, should rest their laurels on substantial activity, sort-of, being defined as only the way we are

doing it.

In fact, as I look at the combination of the attachments or the appendix, with paragraph eight on page 13, it's basically saying they're probably are a variety of ways that you can measure activity, but that ultimately, for these entities to survive, there has to be some flexibility on that. And, that's what I think is our fundamental recommendation.

I'm reading it wrong and then, having spent enough time with some of the folks on the -- and the producer of the agent side, the all-running joke -- he kept saying, "Why don't you guys sell to the individual market?" And they say, "Well, I can sell -- I can get a thousand times more commission making that one call at a thousand employer than I can making that one family coverage."

So, to some degree, that does suggest activity and effort. And, in some cases is more, and plus, in the large employer, I've got the HR Department to do all my enrollment stuff. So, I don't know that, would I want to absolutely rest my entire state pension on that being a legal defense. Probably not, but again, I

don't interpret us as saying that's the way you have to thread this needle.

It says to me that it says simply that the reality is we try to read the law, as we try to assure that these entities are able to reach scale, and have a chance of surviving, is the intent of the legislation is -- is that it's a little bit ambiguous as what substantial activity is. One of the ways may be -- and parenthetically, in some of the exchange markets, it may be that the exchange does all the activity.

MS. NOVAK: Um-hmm.

MR. FEEZOR: So, I don't know how you'd ever meet the substantially all, if you sort-of measure activity a different way. So, anyway, I sort-of come down as not quite as great a concern perhaps, Mark, as you and Rick do, and do think that we are appropriate in saying that there has to be some flexibility. And, at least one way you might consider it is the amount of energy produced, and that is the number of contracts, but not saying that's the only way that the Secretary should pursue this. I'm sorry.

MR. HALL: Well, that's fine. I'm happy to

leave it sort-of ambiguously undecided. My question is was there intent to take a position on this, and I heard that there was an intent. And, if that is the intent, then I was going to debate whether that's right or not. And, then, I was also going to mention that it's not that clear because -- but I'm happy to leave it unclear because I prefer not taking a position on it. So, I'm not sure which route to take.

MS. NOVAK: Full circle.

MR. HALL: I'm not sure which route to go on this. So, at the moment, I won't debate anymore because I agree with what Allen just said, but so, maybe, if I could take -- I think double back and tell you why I think it's not clear and whatever, but I'll save that for later.

But, moving on to this thing up on the board. I do think that this is a good idea, that Rick has modified my proposal -- you know, for the reasons he's articulated. So, I want to add a further layer of complication, which is what is -- why don't we also mention the possibility of a newly formed issuer.

So, you have let's say, an existing large

employer who's self-insured, and who says, "I have a developed set of contracts and networks and what have you for my self-insured employers, but I think that this would be very beneficial for the large and for the small and the individual market as well. And, so, let's create, through a partnership arrangement -- you know, or whatever you want to call it, a co-op to market to the individual small group market."

And, as long as we're doing that, let's create a different issuer that's going to market to other large employers. As long as it's a newly created issuer, it -- you know, it doesn't violate the prohibition of dealing with a pre-existing issuer and seems to kind-of fit the letter and the spirit of the statute.

So, again, I know that's going to complicate things, but I didn't -- I think that, in earlier discussions, there was this idea that what Rick is describing could be carried out through sort-of to -- I hesitate to use the phrase "sibling issuers," but just that. That you have one that's capitalized through the government resources, through the federal resources,

for the individual small group market. The other that's capitalized through other resources for the large group market.

They're both newly formed, so you're not just -- you know, coming in with some pre-existing insurer. They're working with a provider network that's integrated and they're simply -- and they're sharing all -- you know, the administrative and the infrastructure and the IT and all that sort of thing. So, at least I know we have that picture.

And, I guess I want to just say, is that still a picture we have in our mind? Is it something that we somehow now don't agree with? Or that we agree with, but we don't want to just name it? Or just where we are on that. So, to boil down, is what's so problematic about a sibling issuer that's newly formed?

MR. FEEZOR: Well, we probably -- if we're going to start amending the language, we probably need to have Donna or Rick propose that that language be added. And, I was trying to look for where that might be in the finance, and then we can proceed with your question, Mark. Rick?

MR. CURTIS: I -- if we were going to -- I wouldn't -- I would make that an amendment to the amendment --

UNIDENTIFIED MAN: Yes.

MR. CURTIS: -- so it's separate --

MR. FEEZOR: Oh, yes.

(Crosstalk)

MR. CURTIS: -- because I think a lot number -

-

(Crosstalk)

MR. FEEZOR: You're talking about Mark's --

MR. CURTIS: Yes.

MR. FEEZOR: -- last? Yes, okay.

MR. CURTIS: Yes.

MR. FEEZOR: So, we're talking about only --

(Crosstalk)

MR. CURTIS: And, if we're --

MR. FEEZOR: -- what's up there --

(Crosstalk)

MR. CURTIS: If we're going to consider it, in order to be consistent with the intent, it would have to be a not-for-profit, just as the co-op is.

Otherwise, I don't know what creature we're talking about. I was kind-of assuming, with these kind of groups, they'd be on a self-insured basis anyway, but - and using a TPA, but you know.

MR. FEEZOR: Donna, do you have a feel for where in your section of the report, the summary report, that Rick's paragraph might be included?

MS. NOVAK: It might not fit perfectly, but I think the place for it -- because I think that the problem it's trying to solve is -- is the substantially all -- would be under "H." That's -- I haven't read through all of it, but you know, where that other language was that we were just talking about.

MR. FEEZOR: Oh, back in the --

MS. NOVAK: Back in the -- yeah, on page 32 on -- in the detail. Actually, it would be 33 because that's where it ends, 33. I don't know that something that specific belongs up in the front.

MR. FEEZOR: Okay.

(Pause)

MR. FEEZOR: I've got it, I just --

(Crosstalk)

UNIDENTIFIED MAN: (Inaudible) were to be in the summary report. Questions asked, I think it' be on (inaudible) page 32.

(Off Mike)

MR. FEEZOR: All right.

MS. NOVAK: We hadn't specifically gotten -- or we had intentionally not gotten real detailed on eight.

MR. FEEZOR: So, Rick, you're making a motion then, that it would be nine, a new number nine, to have the language that is on the screen?

MR. CURTIS: It would be a continuation of eight, which makes eight long, but it's --

MR. FEEZOR: All right.

MR. CURTIS: -- it's clarified. That's the substantially all section.

MR. FEEZOR: I'm going to try to get some process here, folks.

MR. CURTIS: But, that's totally up to you, Mr. Chair, if you want to put it --

MR. FEEZOR: There --

MR. CURTIS: -- there or in the back.

MR. FEEZOR: A motion has been made, is there a second to put it as -- as the extension of number eight on page 13?

MR. HALL: Second.

MR. FEEZOR: There is a second by Mr. Hall. Debate on that particular issue that we are adopting it, as written on the screen, to go at the end of paragraph eight on page 13. All in favor? Comment, Donna?

MS. NOVAK: Yeah, I still have my issue with the word "coordinate." I think Allen, you had a better word, but anyway, coordinate just is --

MR. FEEZOR: Mine was collaborate, but that's probably even more non-descript, but.

MS. NOVAK: Collaborate, actually, has more meaning to me than coordinate, but --

UNIDENTIFIED MAN: I hereby amend the amendment to substitute the term "collaborate" for "coordinate."

MS. NOVAK: Thank you. But, putting it on eight, my other problem with that is, this is really specific. And, to me, it's -- it's at the same level

of detail as what's in the detailed report. To pull it out, without that other detail, to me seems unbalanced.

UNIDENTIFIED WOMAN: It's in isolation.

MS. NOVAK: Yeah, I don't see any -- you know, and then do we have to talk about -- you know, working with -- we've got a number of recommendations: Medicare, Medicaid, large groups, self-insured -- you know, do we have to start talking about all of them if we bring up this particular example?

MR. FEEZOR: Not if we never -- unless we brought our sleeping bags.

(Laughter)

MR. FEEZOR: My concern is, and I guess I was trying to go back -- since those are historical reports that have been provided, I was trying to get away from us going back and revisiting history, unless we absolutely have to. So, that's the reason I was perhaps, trying to get it into the -- to the summary report even though it would be summarizing something that doesn't exist in the back, which is even more awkward, so ...

UNIDENTIFIED MAN: Well, this is a point we

talked about conceptually, at the previous two meetings. I mean this is not a new concept to the committee members.

MR. FEEZOR: Further debate on the motion, which is the language on the screen: "collaborate" instead of "coordinate," to go at the end, in the new summary section that we are working on. That is the current motion. Debate on the motion? Barbara?

MS. YONDORF: Yeah, can I just -- I don't know if we have to wordsmith right, but it has been pointed out to me, and so, let's not wordsmith it, but there is a provision in the law on the topic of cost effective coverage and -- I mean achieving cost effectiveness and that's the private purchasing councils. So, I just didn't want someone to lose -- lose that that's in the law. So, I don't know if we have to wordsmith it, whether it's "in addition to," or -- I just think it's good to mention because it's a similar -- it's the same kind of topic about cost effective purchasing.

MR. FEEZOR: Okay.

MS. YONDORF: So, I think that's just a friendly amendment to this, which I support.

MS. NOVAK: So, you would -- you'd put it in slightly different context, instead of substantially all, put it as support of that provision of the law? Is that what I heard that you say just --

(Pause)

MR. FEEZOR: (Inaudible) any further -- is everybody clear about the motion?

(Off Mike)

MR. FEEZOR: Is everybody clear about the motion? All in favor say "aye."

GROUP: Aye.

MR. FEEZOR: Opposed?

MR. CARLYLE: Aye.

MR. FEEZOR: Opposed?

MR. FEEZOR: (Inaudible) other issues --

(Off Mike)

MS. YONDORF: And, I think these are going to go quite quickly, but I've been surprised before. Well, especially since I've lost them now, I seem to have thrown my other issues away. And, again, these are probably more in chronological order, as they came up, than where they are in the report. And, this is in

the detail.

I don't know if it is in -- in the summary, so maybe if it isn't, maybe, at this point -- you know, it's just in the record. And, those are two other experts, experts in startup, and experts in integrated care. And, those were found on page 31, item "C" in our detailed report. I don't think that was discussed in the summary that --

MR. FEEZOR: With that objection, I would recommend that we add those -- I mean I would propose that we add those words.

MS. NOVAK: On page 31 in the detailed report, or ...

MR. FEEZOR: Yeah, well, if we can bring them forward. Is there a place?

MS. NOVAK: I don't know, I know.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

(Crosstalk)

MS. NOVAK: Then we, again, have to bring all the detail forward.

MR. FEEZOR: Okay. We'll do that as an --

I'll take the liberty, and some danger, of doing that as an editing that we can catch when we finalize the document.

MS. NOVAK: Okay. Is there supposed to be a motion and a vote on that or is that just going to happen?

MR. FEEZOR: It's done.

MS. NOVAK: Just do it.

(Crosstalk)

MR. FEEZOR: Done.

MS. NOVAK: Okay. There was a comment, and what I wrote down when I tried to follow up on it, I couldn't find exactly where the reference was, but there was a comment this morning about saying -- about a more general discussion on item three. I found an item three on page 12, but I didn't see exactly how it would fit in there, but it was a comment concerning not having to have quite as much detail, necessarily.

MR. FEEZOR: I think that was Roger --

MS. NOVAK: It was.

MR. FEEZOR: -- in fact, that questioned just how mature, or how accurate, some of that language

would be. And, are we putting an applicant and/or the Secretary in an awkward situation by asking them to come in with -- given the tight timelines -- with a business plan that you're going to make some pretty substantial commitments of government capital out to.

MS. NOVAK: Right.

MR. FEEZOR: So, I think that was the concern. It -- what sort-of flowed from that, in some conversation that somebody had after that, is that what is likely to happen in this application process, and this is probably going to be a strain on the department, who likes to sort-of completely become eunuchs while they consider these applications and then sort-of come out and do these pronouncements. And, the reality is, it's probably going to be a little bit more out of the page, I think, of our -- some of our state regulators, who have that constant back and forth with those applicants --

MS. NOVAK: Um-hmm.

MR. FEEZOR: -- to make sure, well, this looks -- and this looks a little high, and this looks a little artificial, are you sure of your numbers here?

And, then, even maybe, six months later, asking for some refinement. So, I -- that's my sense. I -- Barbara? I -- Barbara -- Donna, you've obviously consulted with some companies and some startups and some new lines of business, and that's a similar sort of thing.

MS. NOVAK: Absolutely.

MR. FEEZOR: I don't know whether there could be -- whether there's an easy sentence or two that might be added, somewhere in three that might sort-of reflect that. "A," that it's -- that the -- some of the -- some of the budget and proposal and business development plan may be -- particularly, if it's submitted within the first 12 months. May be a little bit less, how shall we say this, a little less mature, a little less -- a little more inclined to be maybe, general information, as opposed to the preciseness that we might otherwise hope for.

(Pause)

MR. FEEZOR: Anybody have any ideas?

MS. NOVAK: Maybe even a footnote, right before the colon, just to say that we understand that

many entities will not have as refined, a business plan, at this point in time?

MR. FEEZOR: Hence ongoing dialog or ongoing -

-

MS. NOVAK: Ongoing dialog. And, another point, very much along those same lines, and it probably, was Roger who brought it up. These business plans, as they go through the process, and creativity and reality both enter into it, do morph over time, as well as upon implementation. I think we've -- we've included some of that in that -- or at least it's implied in, that we say that the Secretary should follow the implementation. Because I don't know if we specifically have to say that we understand that plans change, but we do. Terry has a question.

MR. FEEZOR: Terry?

MR. GARDINER: I think one way of dealing with this, which we sort-of think about (inaudible) clearly say if your (inaudible) you know, in the (inaudible) reasonable to grant (inaudible) so you contemplate that okay, they come in with their -- their full-on business plan (inaudible) in place of where Barbara

(inaudible) Colorado (inaudible) that she wouldn't be as (inaudible) to object, but it would be -- you know, related to meeting with these milestones, is the word we used (inaudible) so, I think that creates an ability to sort-of word that oversight, and say -- you know, "Okay, well done (inaudible) this next \$5 million for this milestone, but now, we should have the details at that point, but I think that's one of those (inaudible) I don't know that we said it right that way, but I think that's what the vision was. There's still sort-of the logical control in -- you know (inaudible) that there's still these performance -- you know, requirements (inaudible) that's one way of dealing (inaudible) where -- whereas a particular part to the business plan, they don't have enough detail at this stage (inaudible) --

(Off Mike)

UNIDENTIFIED WOMAN: I think the (inaudible) for that, too, is the details on (inaudible) that -- you know, you might say, "Well, we had envisioned at this point, but now we've actually taken (inaudible)

(Off Mike)

MR. GARDINER: (Inaudible) earthquake, how's that for example?

(Off Mike)

UNIDENTIFIED WOMAN: An earthquake.

MR. GARDINER: We're going to have one, definitely.

MR. FEEZOR: So, we will look to put in --

MR. GARDINER: Yes.

MR. FEEZOR: -- Section three, or at least, maybe, as a clarifying footnote capturing the concept. That some of the early business plans may be more general in nature, in terms of their -- but ongoing monitoring or communication between the department and the grantee, as they meet -- as they seek to meet those milestones, and reviewing them before the dialog, or something along that line. I'm not doing well.

UNIDENTIFIED WOMAN: (Inaudible) plan to meet the benchmark.

(Off Mike)

MR. FEEZOR: All right.

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

UNIDENTIFIED WOMAN: That's good.

MR. FEEZOR: With that objection, we'll put in the sentence, "along those lines" or two.

MS. NOVAK: And, that might be the area to put my -- my final note, at least from the notes I had this morning, and that was on proprietary information.

MR. FEEZOR: Yeah, that was a good comment this morning.

(Pause)

MR. FEEZOR: Anyone? If memory serves me correctly, at least one of the speakers this morning spoke about the fact that -- or spoke, at least, of a concern of putting a lot of detailed proprietary information on how this new entity is going to compete with some of the -- some of the best in the business. And, try to succeed in how that being made available to, in actuality, probably, not just only a state entity, but the kind of level of detail that we're talking about is at the federal entity, may be problematic in, and may, in fact, ultimately, provide some real risk for all involved.

Does anyone feel that simply a concern needs

to be noted about that? That the information being asked in the business plan, or something, needs to be - - if the Secretary cannot treat a proprietary, to take some actions to assure that it does not -- well, if they can't protect it, I guess you can't protect it.

UNIDENTIFIED WOMAN: Barbara.

MR. FEEZOR: Barbara, I'm trying to remember. How'd they do -- how'd we used to do that in insurance departments?

MS. YONDORF: I'm not sure it was proprietary information. I think they could label it. In some states though, there's been -- consumers have fought back to make more of that information --

MR. FEEZOR: Available.

MS. YONDORF: -- public, but I would just say, I think this is actually a very important point that I wouldn't even -- that I wouldn't footnote. However, we say it, I think it's going to be real concerning if you want to get this off the ground, and you've given your proprietor -- your competitors -- I mean a lot of this information, especially at the early stages. They could but -- could put pressure on the very provider

group that you're trying to figure out a new plan with. They -- you know, oh, great, we want to find out how you're going to reimburse your providers. I mean an awful lot of this, they're going to want to be proprietary, and frankly, I think they're right.

So, I don't know if we can solve the problem right here, but maybe we make those statements and recognize it, and say it's important for the Secretary to take account of that, to look at what is typically -- you know, at minimum, what is typically proprietary. I mean we're actually going to -- I think we're asking for some information that you don't even have to supply, necessarily, to an insurance regulator.

We're asking, in some cases, for more than that. So, I don't know that we can list all of them right now, but I think it's a very important point, and I'm glad -- thank you, whoever brought it up. And, I see people nodding in the audience, saying, "Yes, protect us."

MR. FEEZOR: All right. Barbara, from your comments, a couple of things that we should note, perhaps I would be (inaudible) about following three,

maybe, where we're asking for so much information, saying that the Advisory Board -- that the application, or the information requested in the -- by the applicants, is very likely to fall into proprietary or very competitive information.

The Advisory Board has significant concerns about such information, if not protected, could, in fact, harm the -- the entity, or the growth, of this entity and therefore, every means to be taken either to safeguard it or to reduce the information that might normally be requested to only that which is non-proprietary, or something along that line --

(Crosstalk)

MS. YONDORF: Something like that.

MR. FEEZOR: Terry?

MR. GARDINER: Does anybody know whether existing loan programs, that are run through the government, or where there's government guarantees, whether -- is the entire loan application public information?

(Pause)

UNIDENTIFIED WOMAN: I don't know with respect

to loan applications, specifically, but with respect to competition by Medicare Advantage plans, competitive bidding for contracts with the department in which certainly, extensive proprietary information is provided, and under the Freedom of Information Act, proprietary information is all protected.

(Pause)

MR. FEEZOR: (Inaudible)

(Off Mike)

MS. YONDORF: -- call it out to make sure it is treated as proprietary.

MR. FEEZOR: Yeah.

MR. HALL: Do we have any reason to believe that any of this information would be public?

MR. FEEZOR: Yeah.

MR. HALL: I mean the statute doesn't say, does it?

MS. YONDORF: No.

MR. HALL: It just would be subject to the normal Freedom of Information Act access, I'm assuming, which has --

UNIDENTIFIED MAN: Take (inaudible)

(Off Mike)

(Crosstalk)

MR. HALL: -- I assume -- no, no, I assume has fairly ample protections for proprietary interests, so ...

MR. FEEZOR: So, stated a little more positively, to make sure that the information provided here is provided the same protection that was on the Medicare Advantage plan?

MR. HALL: Well, I'm just wondering how -- it's a very serious concern, but how much of a problem is it. So, I --

MR. FEEZOR: We don't know.

MR. HALL: -- think we can note the concern --

UNIDENTIFIED WOMAN: No, but it doesn't hurt to call it out.

MR. HALL: -- and another way to say it is that we can state our assumption that this -- this information will be subject to the same --

MR. FEEZOR: Protections.

MR. HALL: -- protections as proprietary information given to the government in other -- in

other arenas.

MR. FEEZOR: Okay. We will find some way to more appropriately, word it, I guess, based on Mark's observations, but still express that concern because it is an important issue and it would probably go between three and four. Donna, what else?

MS. NOVAK: That's it. That's all I have. Somebody else may have (inaudible).

(Off Mike)

MR. FEEZOR: Anyone else with regards to the finance section of our summary recommendations.

(Pause)

MR. FEEZOR: If not, Dr. Mike, you're up.

MR. PRAMENKO: Thank you, Mr. Chairman. I think you'll find that this should be considerably easier than the previous two, but I don't want to jinx ourselves.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. PRAMENKO: Yeah, I know, knock on some wood there. Let's first start with the fact that -- you know, our biggest obstacle, or challenge, that we

had, again, was defining "integrated care" in the infrastructure group, and we spent a considerable amount of time on that. Given the response this morning, it sounds like that time was well spent, and I don't believe we had a whole lot of disagreement on that as far as the definition, and multiple definitions, that we had to try to be inclusive in that regard.

So, unless I'm mistaken, that particular section, that being on page 34, number two, as it goes through and defines "integrated care" in different fashions, looks to be in good order. And, seeing nobody frantically waving their hands, either out of agreement or sleepiness, I will proceed.

I did want to bring up a topic that was brought to us by Roger this morning, in regards to marketing. And, I want to direct your attention to page 14, definition of marketing, number one, middle of the page. And, some concerns regarding that term versus membership development and membership education.

There's some concern that the word "marketing" could be potentially, used by competitors of co-ops to

potentially, slow down the process or cause some trouble, as far as putting a monkey wrench into how these plans could compete for membership. And, that it might be a better idea to be a bit more descriptive in that paragraph, number one, as well as the addendum that goes with it, regarding marketing, with a specific suggestion that I will bring, that we consider adding onto line number two, under number one, at the end of the sentence, "membership development and membership education."

And, I'll stop there and then bring another point in regards to the marketing. I guess I'd first like to ask the Board if they think that concern is a justified and warranted, in whether we need to change the language that we have here in the first place.

MR. FEEZOR: Bill?

MR. OEMICHEN: Actually, the Wisconsin legislature just dealt with this issue in a modernization of the health care co-op statute. And, there was a definition of marketing that dated back to 1922, I believe it was. And, there were arguments by competitors that membership development, membership

education was a part of that and therefore, the co-op was banned from using any of its revenues for that purpose. And, the legislature repealed that provision. And, that was within the last six months.

UNIDENTIFIED WOMAN: That's helpful.

MR. PRAMENKO: Yeah, that is, Bill. And, given that experience, real life experience, could you -- would you like to make any recommendations in this regard?

MR. FEEZOR: I think Donna, perhaps, is getting ready to speak here.

(Laughter)

MS. YONDORF: So, clarify for me. You're saying you want to add the second sentence under one, on page --

MR. PRAMENKO: No, it would be at the end of the first sentence, well it might --

MS. YONDORF: That's what I wanted to clarify --

MR. PRAMENKO: Right.

MS. YONDORF: -- because you don't want it characterized as -- "membership development" is not

marketing, that's different. You want that characterized as -- in place of community outreach and education.

MR. FEEZOR: (Inaudible)

(Off Mike)

MR. PRAMENKO: It would be, in addition to.

MS. YONDORF: In addition to that?

MR. PRAMENKO: Right.

MS. YONDORF: Yes. So, it's *and* membership development --

MR. PRAMENKO: Correct.

MS. YONDORF: -- end of the first sentence under number one --

MR. PRAMENKO: Correct.

MS. YONDORF: -- is that right?

MR. PRAMENKO: And, again, I wanted to open up because -- you know, this is what we had agreed on heretofore, but with some concerns this morning. My first question was, "Do you think it needs to be modified, given the concerns that we heard this morning?"

MS. YONDORF: Yes, and I would support

enriching that --

MR. PRAMENKO: Okay.

MS. YONDORF: -- statement to --

MR. PRAMENKO: And, it sounds like --

MS. YONDORF: -- include membership  
development, yes, and especially if it's consistent  
with other state --

MR. PRAMENKO: Okay.

MR. FEEZOR: Donna?

MS. NOVAK: I have a question. What  
(inaudible)

(Off Mike)

(Pause)

MR. FEEZOR: Bill?

MR. OEMICHEN: The question was the actual --  
when a member is signing up and you send them the  
welcome packet about being in the cooperative, for  
example, letting them know what the governances of the  
entity, those types of things. Wisconsin legislature  
said that's separate from advertising and becoming a  
member, or buying your health insurance there. This is  
about being a member of the cooperative and what it

means to be an owner of this business that you're now owning.

And, this case, I know, owning not's -- we use it differently in the upper Midwest, but that it deals with the co-op governance aspects, not with the fact, you're getting health insurance from the entity.

MS. YONDORF: Yes.

MS. NOVAK: Okay, so --

(Crosstalk)

MS. YONDORF: Target the member's --

MR. OEMICHEN: Right.

MS. YONDORF: -- already a member --

MS. NOVAK: But --

(Crosstalk)

MS. YONDORF: -- you're developing --

MR. OEMICHEN: Right.

MS. YONDORF: -- somebody (inaudible)

(Off Mike)

MS. NOVAK: Okay. So, it's actually --

MR. OEMICHEN: Right.

MS. NOVAK: -- development after they're a member?

MR. OEMICHEN: Right.

MS. NOVAK: Okay.

MR. OEMICHEN: It's development after they're a member, right.

MR. PRAMENKO: I'd suggest not -- we don't wordsmith now, but you have -- add some of that description to that phrase because to a layperson, and I will throw my -- "membership development" sounds like development of more enrollment. So, I mean I -- the concept's great --

UNIDENTIFIED MAN: Yeah.

MR. PRAMENKO: -- elaborate.

MS. YONDORF: That's fine.

MR. FEEZOR: Okay. So, we're going to use an e.g., or a footnote.

UNIDENTIFIED MAN: E.g., or footnote.

MR. FEEZOR: Is that -- Rick? Okay? So directed?

MR. CURTIS: Very good. The other element was on line five to this, again, same concern. "Applicant should submit, as part of their application, marketing plans that describe their strategies for building

enrollment over time." A suggestion was made that we should strike "marketing" out of line five, under paragraph number one, and replace that with "membership development." "Applicant should submit, as part of their applications, membership development plans that describe their strategies for building enrollment over time." I don't know if that's redundant or not --

UNIDENTIFIED MEN & WOMAN: (Inaudible)

(Off Mike)

(Crosstalk)

MR. CURTIS: You're right.

UNIDENTIFIED MEN & WOMAN: (Inaudible)

(Off Mike)

MR. CURTIS: Right.

UNIDENTIFIED WOMAN: -- is what we just said.

MR. CURTIS: Right.

UNIDENTIFIED WOMAN: Yeah.

MR. CURTIS: So, it sounds like that one -- if we describe --

UNIDENTIFIED WOMAN: Why would you have to, even describe? They should submit their plans to build enrollment over time.

UNIDENTIFIED MAN: Yeah. Strike the word "marketing."

UNIDENTIFIED WOMAN: Because that's -- it doesn't have -- there may be different mechanisms for building it other than what is traditionally in a marketing plan.

MR. FEEZOR: So, enrollment growth --  
(inaudible)

(Off Mike)

UNIDENTIFIED MAN: I second.

MR. FEEZOR: So ordered.

UNIDENTIFIED WOMAN: I wouldn't characterize it as "marketing."

UNIDENTIFIED WOMAN: Um-hmm.

UNIDENTIFIED WOMAN: Yeah.

MR. PRAMENKO: Okay. I was listening, as carefully as I could, this morning to any other elements that specifically addressed the infrastructure and those are the main items as far as marketing. And, again, I want to go back to -- and making sure everybody's comfortable with the integrated care definitions because that's centrally -- that was the

central component what we wanted to get out -- the biggest point of contention out of this element of our -- out of our subcommittee. And, with that, if there's no comments, we've quickly gone through the infrastructure recommendations.

MR. FEEZOR: Questions of Mike, or his group, with respect to the proposals they've -- or the items they've raised, most of which we have adopted in directed fashion, any other points with respect to infrastructure?

(Pause)

MR. FEEZOR: If not, we have just a short distance to go, but I'm going to suggest that we take a 10-minute break. Be back at 3:10 P.M., and we may be out of here by 4:00 P.M. after all.

(Laughter)

MR. FEEZOR: It's all up to you, Barbara.

MS. YONDORF: Thank you.

(Whereupon, the meeting adjourned for a 10-minute break)

MR. FEEZOR: As we get ready for Ms. Yondorf to lead us through the last section, just a reminder

that if you have not, and would like to, sign a -- the note -- sympathy note to --

UNIDENTIFIED WOMAN: Margaret.

MR. FEEZOR: -- Margaret Stanley, to please do so, and I'm going to go ahead and pass it around. And, again, before everybody laces up their track shoes, when Barbara gets finished, we need to talk about some of the -- looking at the final vision.

My sense is, and I don't want to look at staff, because they're going to die, that we'll probably, need a conference call after we, sort-of, do these wordings, to send it out in electronic form in a conference call. And, that sounds easy, just for sort-of sign-off, but the reality is, if all of us gather together, then it is a publicized public meeting and so, all sorts of stuff goes with that, so anyway.

The last section, what we refer to as "the Mikie subgroup" that is give it to Mikie, and she'll eat anything, and she'll take care of it. So, Barbara?

MS. YONDORF: Well, we were called the cleanup committee, and -- but all of you did -- already did the cleanup in all the other sections, so I will be

mercifully short, as long as we cut off all of your mikes.

(Laughter)

MS. YONDORF: I was brilliant because we only received one comment on page 18, number four, and it's the circumstances under which we can discontinue funding. And, I learned my lesson from previous conversations and I talked to Mark, who made an excellent suggestion. And, he -- I got prior approval of the wording. So, that's why your mike doesn't work -- does not work.

(Laughter)

UNIDENTIFIED MAN: Friendly amendment.

MS. YONDORF: Friendly amendment. So, if you look at page 18, number four, the issue was the circumstances under which one could consider discontinuing funding, given that we said that should be your last option, consider doing other things, but if you are, what might be a circumstance.

And, you see on line one, two, three, four, five, in about the middle, it talks about a variety of circumstances and it says, "Or a demonstrated lack of

consumer support." What we wanted to add was, "or a demonstrated lack of consumer support, governance, or control." So, it's not just "support." That is it.

MR. FEEZOR: Ms. Yondorf has made that as a motion to change -- to add that language, and Mark Hall seconded it.

MR. HALL: Um-hmm.

MS. YONDORF: Woo hoo.

(Laughter)

MR. FEEZOR: Is there a debate? Is there a debate on the issue?

MS. YONDORF: Please don't, nobody debate.

(Laughter)

MS. YONDORF: Uh-oh, Terry's got a --

MR. GARDINER: No, no, not this time.

MS. YONDORF: He's jumping the gun.

MR. FEEZOR: Then, if not, all in favor of the motion say, "aye."

ALL: Aye.

MR. FEEZOR: Opposed?

(Silent)

MR. FEEZOR: Congratulations. Okay. We --

there probably are a couple of --

UNIDENTIFIED WOMAN: Donna.

MR. FEEZOR: Donna?

MS. NOVAK: There was one other thing on Barbara's, if -- we had one more thing that came up in the presentation --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MS. NOVAK: On page 19, number nine, and that is around enrollment, that they've achieved enrollment. And, I think a couple of us felt that should be "mature enrollment," or even go as far as "profitability," because just having a couple members signed up, still the plan probably isn't going to be able to repay the loans. So, I think we said we would discuss when repayment would start, sorry, Barbara.

MS. YONDORF: You know what, I think this brings up, though, and I think it's, in part, a wording issue. So, "loan repayment period" could just mean when does the clock start for the 15 years, not that you have to do it right away, or "loan repayment period" could be, you're starting the repayment of the

loan.

So, it sounds as if that comment goes to -- you have to start repaying the loan. Is that what we're talking about here, as opposed to just -- I mean one question was, "When does 15 years start?" And, the other one is, "When might I have to start repaying a loan?" So ...

MS. NOVAK: Okay. And, I think I was interpreting it as a -- I think at least one other person was. So, you're saying this is just when the clock starts, and so far, we've been silent on when money actually has to start being received.

MS. YONDORF: I think so. That's my recollection, but --

MR. FEEZOR: Any way -- if we can clarify easily we'll do so.

MS. YONDORF: How about if we just say the --

MR. FEEZOR: Annie, don't make me a liar on that.

MS. YONDORF: -- how about if we just say, "The 15-year loan repayment period shall," if that helps it, but ...

MR. FEEZOR: Okay. Barbara, before you start smiling, and back away from the mike, one of the presenters, earlier this morning, appropriately raised the question, "What if it is a" -- I'll refer to it as I used to when we were closing, padlocking the doors on some of the fledgling HMO's back in the '80's. What we had to do, what we called a "fire sale." And, whether the -- their needs to be -- I'm sure it won't happen, but in the event that it does, that the Secretary has to move more expeditiously, perhaps -- and, my guess is, in tandem with the state regulator, to dispense with that.

And, it may forestall, or actually preclude, some of the other provisions that we've talked about in a more meaningful process. All that's my way of saying, we probably need some language acknowledging that, so the Secretary, in case she hasn't thought that -- and of course, in all insurance regulators, she probably knows that. But, anyway, I wonder if our report should not make some note of that, that there may be some circumstances in which continuing care for the individuals may, in fact, cause for an accelerated

process of conversion or merger.

(Pause)

MR. FEEZOR: I'm looking at a lot of blank faces here.

(Laughter)

MR. FEEZOR: Mike?

MR. PRAMENKO: I guess I'm a bit confused about the -- I mean how is it done now? I'm not familiar with that, versus do we -- you know, can the existing mechanisms stay in place, or do we need to make any recommendations on a different way of doing it?

MR. FEEZOR: I guess it was more in the sense that we ask the Secretary to, sort-of, do, as the last resort, da-dat, da-da, do this, do this. And, that in some instances, if things get out of whack in a hurry, that what you will find -- and if there's -- particularly, if there's no more monies or resources that can be extended, it is really a force -- I mean it's the shot-gun marriage.

And, whether we need to acknowledge that, the reality is that since they will have to be regulated at

the state level, I guess the state authorities that are there stand anyway. So, I mean nothing that we would do would circumvent that, but ... All right, it doesn't look like there's any need -- I'm the only one that feels there might be some need to acknowledge that. So, we'll let that one go. Bill?

MR. OEMICHEN: Just do that. If there is a merger that's required, due to a fire sale, and the loan hasn't started its repayment, will HHS look to that company that acquired the co-op for repayment? That's going to have to be covered within --

MR. FEEZOR: The terms of the loan.

MR. OEMICHEN: -- the details of the merger agreement, but I don't know -- I just asked this question rhetorically. I'm not expecting an answer, but I wonder what HHS will do in that case.

MS. NOVAK: Yeah, and I had another --

MR. FEEZOR: Donna?

MS. NOVAK: I'm sorry.

MR. FEEZOR: Another question.

MS. NOVAK: I had another thought along those same lines. That's also when the for-profit issues are

not an issue anymore, that -- you know, whoever they can get to take them over, but I don't think we can spend a lot of time.

MR. FEEZOR: And, I think we'd asked this, but I don't think the NAIC had spoken to how many states have guarantee mechanisms that affect health insurers. And, if the (inaudible) -- and there's -- that's a two-edged sword, if the -- their members might benefit from that guarantee fund, but at the same time, assessments might be drawn on these entities, should the guarantee fund cover somebody else's insolvency. All right. Terry, you had an issue you were going to raise sort-of in general?

MR. GARDNINER: (Inaudible)

(Off Mike)

MR. FEEZOR: Okay.

UNIDENTIFIED WOMAN: Mike.

MR. FEEZOR: Mike?

MR. PRAMENKO: Yeah, Allen, you'd asked me to come back with some language in our conclusion section regarding exchanges. And, you know, our conclusion does have some language. If you look at the second

paragraph on conclusion, it does say --

UNIDENTIFIED WOMAN: What page?

MR. PRAMENKO: Twenty-two.

MR. FEEZOR: Page 22.

MR. HALL: Page 22, second paragraph, starting on the third line, "This program combined with other elements of the Affordable Care Act, including the ability to compete for enrollment in the health benefit exchanges, significantly reduces those barriers by providing adequate startup and solvency capital, give co-ops time to build enrollment and stability."

You know, we are giving some voice here, to health exchanges, but I think there's a greater role for us to play here, and maybe some language that we could include. And, I'm just throwing something out here, which I will state, in just a moment, but there's a significant -- you know, we're -- part of the reason that this has formed is, to change the health paradigm in health systems in the states.

And, if you take the example of any new product out there. Say, for instance, widgets, and somebody finally comes up with a different way to make

a widget, they're a new company, that automatically can help change how the other companies make the widget. And, so, there's this evolution of how health care occurs.

And, I think it's fair to say that if the co-op's are successful, it can change the paradigm of how health care is delivered with the other -- in markets across the country. So, given that, and given the concept of where health care is going, I think it's very important that we send the message that states through their exchanges, in concert with co-ops, can change the paradigm a bit. Language could be -- and I offer this, "The co-ops, if effectively designed and implemented, can facilitate the development of high -- higher quality, lower cost health care within a state exchange."

(Pause)

MR. FEEZOR: Comments on Mike's proposed language, to be added.

(Pause)

MR. FEEZOR: Ah, your timing is everything, Mike.

(Laughter)

UNIDENTIFIED MAN: You're (inaudible)

(Off Mike)

(Laughter)

MR. FEEZOR: With that objection, it will be added to the report.

UNIDENTIFIED MAN: You got another one (inaudible)

(Off Mike)

UNIDENTIFIED MAN: No.

MR. FEEZOR: Oh.

(Laughter)

MR. FEEZOR: Terry?

MR. GARDINER: Mr. Chairman, in taking your advice about timing --

(Laughter)

MR. GARDINER: -- page 20, (inaudible) recommended timeline for the co-op program and this -- and note, one new item, the Advisory Board needs to review activity December 2012. And, since this proposed meeting is going to be about reviewing activities and the progress of co-ops in -- and I've

learned a lot from people all over this country, but there seems to be a lot of innovation out, more in the center of the country, around Colorado. I think we should meet in Colorado --

(Laughter)

MR. GARDINER: -- and actually, hear about all this innovation and people from Wisconsin and Iowa and Mexico --

MS. YONDORF: And, Aspen is in the middle of the state.

MR. FEEZOR: I know --

(Crosstalk)

MR. GARDINER: Is that where Aspen is? I didn't know if that's where Aspen was, but anyway, it seems more appropriate that we meet in Colorado.

UNIDENTIFIED WOMAN: Okay. Thank you.

MR. FEEZOR: Rick, we had a --

MS. YONDORF: That was an amendment, "In Colorado."

MR. FEEZOR: And, I assume that since this was in your section, I assume you would --

(Crosstalk0

MS. YONDORF: It's going to be --

MR. FEEZOR: -- you accept it --

(Crosstalk)

MS. YONDORF: -- in there --

MR. FEEZOR: -- with no objection whatsoever.

(Crosstalk)

MS. YONDORF: -- yeah.

MR. FEEZOR: Rick, you and I were sharing some concerns. And, I hate to say this. Back to -- relative to the -- to the language there, in that -- my sense is that while we want these co-ops to be very creative, in how they collaborate and partner with existing entities, it may include, for purposes of achieving economies of scale, and so forth, large employers, pre-existing self-funded plans, or whatever. That there was a real concern that the Board needs to emphasize, or that it might be appropriate for the Board to emphasize, if it is our feeling, that, in fact, the monies that are to be expended, in starting up these co-ops and these operations are, in fact, and should be targeted, to the defined audience. That is the individual and small group.

Stated another way would be that, where there are large groups, large employers, who, in fact, might participate in some fashion, with these new entities. That the -- certainly, the underlying solvency requirements and so forth -- it might be funded by the federal government, should not be used for those entities, that those entities -- those larger entities, those non-targeted entities, should be self-sustaining, in other words.

Is there -- I guess my question to the group is, is that a concern, enough, of the group -- do they share it? And, then "B," is that something we need to put a statement in to advise? In other words, let me see if I can be a little more, simple this time.

That while we do encourage -- that we recognize that various ways of collaborating, maybe even actual enrollment, I don't want to preclude that. But, that the federal financing extended to co-ops should go for the new business and should not, in fact, go to support the larger business, certainly, in terms of the solvency underwriting. Rick? And, I didn't do a good job of presenting some of our conversations.

MR. CURTIS: Well, I think that's more pertinent to -- if we're including in the report, which was news to some of us, the more detailed language from the committees. I think that goes -- that concern goes to the language on page 32, H-C, that we talked about before, which has the co-op itself, potentially, offering coverage too, etc.

And, I -- I believe that -- you know, having this -- some significant share of the grants or loan -- and loans, the financing, which seems to be -- the legislative intent seems to be clear to me, that part of what they're talking about, substantial activity, is what that money is used for. And, it seems to me, we should be clarifying that that -- those funds, especially the solvency funds, that's where most of the money is, be used for the individual market and small group market. And, if we're going to include this language on page 32, we should clarify that. Otherwise, I think, if people follow this advice without that admonition, there might be legal exposure.

MR. FEEZOR: Barbara Yondorf?

MS. YONDORF: Yeah, I agree with the thrust of

what you're saying, but I'm just trying to get the reality on the ground. I mean one of the problems is a term like "large employers." I mean a missing market for us that's a real problem, is, sort-of, the 50 to 150, which is technically a large employer in our state.

MR. CURTIS: Well, under federal law, 50 to 100 becomes small.

MS. YONDORF: It *becomes* small, right.

MR. CURTIS: So -- which is what's pertinent.

MS. YONDORF: Yeah, but I'm just saying -- I don't know how you -- I think you guys were saying "solvency" in being the solvency or (inaudible). And, I don't think I can separate out the fact that I brought in 200 providers and an IPA, as a core, and a hospital with 300 employees, but somehow the solvency money can't be used for them. So, I'm agreeing with the thrust of what you're saying. I just think we have to be a little --

MR. CURTIS: How you do it.

MS. YONDORF: -- yeah, a little careful about that wording, so we don't end up biting around tails

while staying consistent with the spirit of the law.

MR. CURTIS: No, I -- and in terms of the -- you know, our concept was initially, if you're going to have some of the -- like a provider group that's also -

MS. YONDORF: Right.

MR. CURTIS: -- the contractor provider group. And that's -- in the longer run, that's not a principle use of the solvency funds. And, I would be, for one, perfectly comfortable with you trying to craft language that tries to bridge this problem in as realistic language. But, I think if we have something out there from us, that sounds as if these -- you know, the notion that one 10,000 person group and one individual, each count as one contract.

And, it's okay that 4,000 times more of the solvency funds is going for the big group, to me, seems to be a violation of the intent of the federal law. And, we should have language that makes it clear that's not what we're talking about. And, I'll just leave it at that.

MR. FEEZOR: Tim?

MR. SIZE: I don't have specific wording, but I think it's been a pretty obvious thread and concern throughout our meeting today, around potential abuses of partnership joint venture stuff. And, I don't criticize that because I think it's appropriate. I would hope, though, that in the final editing, that we maybe -- in terms of where we place some of these warnings, and how we do it, that we maintain the tension that, in my mind, is equally against the purpose of the statute in public purpose. That we incent a lot of applicants to go it alone, artificially, because they see a pot of federal money. They think -- you know, they can just buy whatever they need, they're John Wayne, they can make it happen.

And, I quite frankly, I think that is as much an opportunity for failure, under this program, as the fraud and abuse kind of things we've been talking about, but we really haven't mentioned it today. So, I just wanted to get it into the record for balance.

UNIDENTIFIED MAN: Right.

MR. HALL: Because it really is an issue of tension.

UNIDENTIFIED MAN: That's good.

MR. FEEZOR: Donna?

MS. NOVAK: I don't think there's any wordsmithing and coming up with a couple sentences that's going to allow you to bifurcate solvency funds into large group versus small group in your membership. It's not that simple. I don't know how you can do that.

I see what you're saying, but it's not that simple. Just the way the solvency requirements are set out, they're not -- it's not easy to say, "Well, it's a dollar-and-a-half per person, so you have to come up with -- you know, \$2,000 dollars."

MR. CURTIS: I was not presuming we could be that precise about it, but if this language would suggest, if five years from now, a co-op, to make up numbers, had -- you know, 80,000 lives from a few big groups, and 10,000 lives from individuals and small groups. And, they were all on an insured basis, and the federal funds were going to assure solvency for that population, that's -- it seems in such clear violation of the intent of the use of these funds.

So, some kind of rhetorical boundaries here, and I leave it to Barbara. If Barbara tells me it can't be done, that's fine. If she thinks, she can come up with language that's okay with you, that's fine.

MS. NOVAK: Barbara, do you think you --

(Crosstalk)

MR. CARLYLE: Dave Carlyle.

MR. FEEZOR: Dave, go ahead.

MR. CARLYLE: My question in regard to a lot of our conversations around this issue is, that at least some of these groups, and I was thinking a majority of these groups, would be self-funded groups. I mean if they're self-funded, I guess, and I'm just not an actuary at all. Doesn't that take the onus from solvency from the -- you know, aren't they -- within their selves have to prove solvency, as opposed to tying it over to federal funds -- you know, for the reserves that we're talking about.

MR. FEEZOR: Yep. Dave, I think your answer would be, yes, for the self-funded. I guess the question is, is there any other larger group that is

above a hundred lives that might be at a risk basis and using federal funds, particularly -- and I -- and Rick's point, want you to be a little more overt.

What if a couple hundred life groups were pulled from a carrier that was not terribly happy about that, and that it was clearly shown that a significant amount of the reserving component was sort-of pre-funded or funded with federal funds. So, Donna?

MS. NOVAK: I think Dave is making an excellent point, and one that I have thought of and didn't articulate, is that, when you start talking about the multi-thousand life groups, they're self-funded. They're -- you know, they're not -- and very small solvency requirements around them. They don't really affect the solvency requirements much.

It's the multiple 200 and 300 groups. So, rather than talk about being careful about what's -- where's the solvencies being funded, because I don't think it's that easy, maybe we should not -- you put that example in there for -- and just leave it to the Secretary to define substantially all, and ...

MR. FEEZOR: Or a subtle, but perhaps more

handcuffed would be to say, when you define the non-substantially all businesses being self-funded.

(Pause)

MR. FEEZOR: I get you, where you -- I mean that keeps you pure, as far as the use of not mixing the monies.

MS. NOVAK: Um-hmm.

MR. CURTIS: Just to clarify. I think this language is what I had in mind. They're using the same administrator. They're paying for their own administrative services. They're using the same provider arrangements. And, my notion was, normally, this would be on a self-funded basis. That's very different from having the language on "C," on page 32, the words, "the co-op itself providing the contractual relation -- arrangement for the coverage."

MR. FEEZOR: And, so, the fact that this is in the --

MR. CURTIS: I don't think this is problematic --

(Crosstalk)

MR. FEEZOR: Yeah, okay.

UNIDENTIFIED MAN: Yeah.

MS. NOVAK: Our --

MR. FEEZOR: My concern is primarily, on page 32 and so ...

MS. NOVAK: I --

MR. FEEZOR: Mike?

MR. PRAMENKO: Please correct me if I'm wrong, but self-appointed funded plan really doesn't help the solvency of the insurance company, does it? I mean the money really isn't -- it's not a part of the pool, so ... I mean that language really wouldn't help.

MR. CURTIS: It may help to create administrative (inaudible)

(Off Mike)

MR. PRAMENKO: No.

(Pause)

MR. FEEZOR: Donna?

MS. NOVAK: Self-funded helps in quite a few ways. One, is if they're actually making a profit from the self-funded, from the ASO fees, and many large carriers will actually, not make a profit because it gives them bargaining power, the bargaining power that

was talked about earlier.

It doesn't significantly increase the solvency requirement, but the profits from -- from the fees, adds to the solvency, and it gives them more bargaining power. And, so it's a good solution. And, the significantly all could, I would think, look at just the insured population. And, if there were funding revenue streams from other sources, like self-funded, that wouldn't be part of that calculation. I could see that as an interpretation.

(Pause)

MR. CARLYLE: Dave Carlyle again.

MR. FEEZOR: Dave, what's that?

MR. CARLYLE: I guess I just -- you know, to me, I like the approach Donna just took. Is that if it's self-funded it just separates away from, maybe, some of the demands for substantially all.

MR. PRAMENKO: Okay.

(Pause)

MR. FEEZOR: Other issues before the group?

(Pause)

MR. FEEZOR: Let's -- we will not vote, since

there are about -- according to my list, about five substantive ads I don't think are terribly earth shaking, but I, unless somebody feel strongly about it, I think we're probably going to have to do one phone call with an electronic text. Like I said, that's a little more difficult because it is, in fact, a public meeting, as it should be.

Hopefully, it will be simply to -- and I won't be able to see anybody's cards up, so it'll be a short meeting. I'm just teasing. But, it would probably take about two weeks. I mean we can get the turnaround on the writing in -- probably, in three to four days, given the normal super turnaround, but it would take two weeks that we would almost have to schedule a call now.

UNIDENTIFIED WOMAN: Well, it would take -- we have to provide some notice?

MR. FEEZOR: Yeah.

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

MR. FEEZOR: Fifteen.

UNIDENTIFIED WOMAN: So, (inaudible)

(Off Mike)

MR. FEEZOR: All right. Mark?

MR. HALL: I'd be very happy to consider -- you know, approving the report with a list of intended -- you know, clarifications that you just recite to us.

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

MR. HALL: And, if you need -- you know, five minutes, to get them all well composed and stuff, I'm happy to stay five extra minutes.

MR. FEEZOR: All right.

MS. NOVAK: But, you only get five minutes --

MR. FEEZOR: Yeah, you guys are being ugly.

MS. NOVAK: -- (inaudible)

(Off Mike)

MR. FEEZOR: I would have to probably, get with -- triangulate with two of my other colleagues, note takers over here, so ...

UNIDENTIFIED MAN: Make it 10.

UNIDENTIFIED MAN: Take a break so you can (inaudible) --

(Off Mike)

MR. FEEZOR: Yeah, take -- you want to stand down for --

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

MR. FEEZOR: -- until 4 o'clock and we'll try to give you a -- and I assume, Mark, that you're -- that your motion also says -- and staff having the latitude to make some of the editorial, non-substantive changes, such as those that you, yourself, sent forward.

MR. HALL: Yep.

MR. FEEZOR: Okay. Okay, I just want to make sure I got that.

UNIDENTIFIED MAN: All right. Ten, ten (inaudible) --

(Off Mike)

(Whereupon, the meeting was adjourned for a ten-minute break)

MR. FEEZOR: Any omissions or oversights you can blame on your Chair, and all the things that are being caught, and caught well, you can thank staff for.

(Laughter)

MR. FEEZOR: If you will walk through your reports, I'm going -- there are about nine changes. Let me be clear. There are a couple areas where I think, for instance, Donna and Barbara were talking about maybe some difference [in] interpretation. And, we read it differently, just as I had, I think, earlier this morning.

On those, we will find language to make sure there is no differing [in] interpretations, so I did not -- I am not including those. Some of the small things like adding startup expertise, and so forth, that we sort-of agreed to by consensus, are not in. So, these are the more substantive, at least in your Chair's judgment.

First being, page five, where we -- the concern this morning was about, that we were putting too much emphasis on financial stability and saying that it must be vigilantly and we're going to need to be maintained.

Next change that you are authorizing us to make, and your approval with us making these appropriately, oh, is -- I've got to -- can I read my

own --

UNIDENTIFIED WOMAN: Page seven.

MR. FEEZOR: -- is on page seven. I love this, I can't read my handwriting now. All right, Annie, help me, it was three or four there.

ANNIE: Begin where the --

UNIDENTIFIED WOMAN: Whole --

ANNIE: -- four.

UNIDENTIFIED WOMAN: -- uncontested --

ANNIE: -- on number four.

MR. FEEZOR: Oh, up -- yes, yes, thank you. I can't read my writing, that four is going to be amended saying, "the preference for contested elections." Shout out if we're missing it on this.

Next one, page eight, number seven. And, here was the expanded language that I couldn't find that we had worked on that Barbara came up and read. Barbara, you want to read --

ANNIE: I have it.

MR. FEEZOR: Okay, Annie.

ANNIE: "To be eligible to apply for loans and grants under the co-op program, the applicant shall

have legally formed the relevant non-profit, not-for-profit entity, organized as appropriate, under relevant state law. This could include, for example, non-profit cooperatives. The entity will present to the Secretary, evidence of such organization, at the state level, with the application for funding under the program."

UNIDENTIFIED MAN: There was additional --

UNIDENTIFIED WOMAN: There was another -- yeah

--

(Crosstalk)

MR. FEEZOR: Yeah, and we --

UNIDENTIFIED MAN: A public purpose.

(Crosstalk)

UNIDENTIFIED WOMAN: Yep.

MR. FEEZOR: Yes, "public purpose," and we'll catch that, but the point is that is expanding the latitude of entities being authorized at the state level, or being licensed at the state level, under some of the new expanded language, but providing the reinforcement that it carries out the public purpose. Terry?

MR. GARDINER: Yeah. On -- earlier on page seven, was there going to be a modification of the list of people that are suggested, which I advocated that labor should be added, and then, we decided that rather than add labor, maybe we --

MR. FEEZOR: That never carried, but we substituted that we would look for a couple other more appropriate areas for where "e.g." or examples of entities, and that we would try to say "labor" there. Would the group like to reconsider?

MR. GARDINER: Well, I just thought we concluded that -- that rather than add "labor" and --

MR. FEEZOR: That there'd be none.

UNIDENTIFIED MAN: No, we didn't include it.

MR. GARDINER: Okay. I'll suggest another place to add it then.

MR. FEEZOR: Okay. Moving forward, the next one --

ANNIE: Allen? I think that the language was, "groups or classes who are non-members who would add value to the plan."

UNIDENTIFIED WOMAN: Yeah.

MR. FEEZOR: Okay.

UNIDENTIFIED WOMAN: You just took out all the examples.

MR. FEEZOR: All right.

MR. SIZE: I'm sorry. That substitute was made on number four?

UNIDENTIFIED WOMAN: Allen.

MR. FEEZOR: It's not the Chair's recognition -- recollection that we did that. We admitted that as one of the alternatives.

UNIDENTIFIED MAN: It was discussed, Tim.

MR. SIZE: I thought we just left it "as is."

UNIDENTIFIED WOMAN: Yeah, we left it.

MR. FEEZOR: We left it "as is" with the agreement that we would try to find some other non-board specific references, that we could use "labor" as an e.g.

UNIDENTIFIED MAN: That was my understanding.

UNIDENTIFIED WOMAN: Yeah.

MR. FEEZOR: Yeah, I think that's --

UNIDENTIFIED WOMAN: Not on the board --

MR. FEEZOR: -- okay. That is what we agreed

upon. Then, the next one would be page nine. And, this was the one that we spent hour, hour-and-a-half on. And, basically, that under 10, we would move the amended three bullets from page 55, plus -- I call it "Bill's caveat language," for lack of a better term, of warning the Secretary about some of the dangers and not trying to go outside the intent of controlling entities, for-profit or not-for-profit.

Page 10. This would be under "B." Stronger - - oh, this was, language was going to be -- that we agreed to conceptually, but we did not have language to look at, that was going to be stronger about the unjust enrichment of management and board members. And, yet, providing language that, for continuity purposes, if there was -- of the business that if there was some need to maintain some of the management, fine as long as, again, it was not inordinate in (inaudible) private gain. And, I'm struggling because we did not have language, but we all nodded that that's what we wanted. Next one, there --

MR. SIZE: Wait, I'm sorry. Was "B" the last sentence -- you say that there was -- we were agreeing

on the concept of not having inappropriate gain, but did we remove the -- because as written, literally, it says, "Management cannot (inaudible) to management."

(Off Mike)

MR. FEEZOR: Yeah, and we were going to say that "under limited circumstances there may be -- that management may be needed to -- for continuity of operations."

UNIDENTIFIED WOMAN: But that --

UNIDENTIFIED WOMAN: The issues --

UNIDENTIFIED WOMAN: -- (inaudible) --

(Off Mike)

UNIDENTIFIED WOMAN: Yeah, but the issue is financial gain.

MR. SIZE: The issue is that they not have a windfall --

UNIDENTIFIED WOMAN: Yes --

MR. SIZE: -- for doing it, but I don't think we were wanting to put unnecessary barriers between -- when the company's moved over --

UNIDENTIFIED WOMAN: Right.

MR. FEEZOR: No.

(Crosstalk)

UNIDENTIFIED WOMAN: Right.

MR. FEEZOR: No, I mean I think -- Tim, I think that's --

(Crosstalk)

MR. SIZE: -- prohibits that.

MR. FEEZOR: Yeah.

MR. SIZE: All right. I was being --

MR. FEEZOR: It's a significant re-write here.

MR. SIZE: Right.

MR. FEEZOR: And, we also, I think, talked about the language -- stronger language that had been recommended from a consumer, about the resulting entity or the pre-decedent parent organization, or it's also so that it -- it's not just the direct employment, but up or down. Page 12.

(Pause)

MR. FEEZOR: And, this was -- oh, God --

UNIDENTIFIED WOMAN: On number three  
(inaudible) a more --

(Off Mike)

UNIDENTIFIED MAN: Footnotes, three --

MR. FEEZOR: Yeah, it's --

UNIDENTIFIED WOMAN: -- general business plan.

MR. FEEZOR: Yes. Barbara or Annie? Can you read my own notes here?

ANNIE: Yeah. On number three, there was going to be an inserted footnote, understanding that the -- they could refine their business plan. And, then, the new number four to -- for the protected --

MR. FEEZOR: On the -- on the --

ANNIE: -- proprietary --

MR. FEEZOR: -- proprietary information --

ANNIE: Um-hmm.

MR. FEEZOR: -- in number four, we will find appropriate language and frame it, Mark, so that if it's something -- we don't have to be -- and assure us that you can protect it, otherwise caution should be taken. All right.

Bottom of page 13. We did, with Rick allowing a little wordsmithing on "collaborated," instead of "coordinate," this language was added to paragraph eight. And, then, on page 14, we expanded the definition of "activity," particularly regarding member

education and member -- membership development, that was not to be construed as being a part of marketing. And, we were going to do a footnote.

UNIDENTIFIED WOMAN: And, then we were deleting that they just must submit a plan for building --

MR. FEEZOR: Right.

UNIDENTIFIED WOMAN: -- enrollment and delete "marketing plans."

MR. FEEZOR: Marketing -- we said it should be growth plan --

UNIDENTIFIED WOMAN: Yeah.

MR. FEEZOR: -- or a -- yes.

UNIDENTIFIED WOMAN: Yeah.

MR. FEEZOR: And, we were going to further clarify the membership development with an example from Bill. Page 22, we had -- Dr. Mike's doing a succinct job of tying it about -- sort-of the hopes of these new entities and -- along with exchanges, perhaps, starting a little new energy in the market place. Does anyone have any other, what I call, "major-level issues?"  
Mark?

MR. HALL: Since we are at the level of wording changes, I had done a list of wording issues, some of them are just sort-of clearly -- you know, typos, but there's one that's potentially substantive. So, I think I better raise it now, to make sure it's clearly in the record. And, so, I apologize for doing this, but I think it's too important to overlook.

On page nine, item 11. This has to do with whether they allow relationships with a government-based provider group. And, there was a distinction between whether providers who are government employees can be on the governing board, versus whether government employees can be basically, part of the network. And, there's a strict prohibition against government employees being on the governing board. So, we maintain that, but we basically, said that -- well, the language here mixes up the two roles, one of governance, and one of simply, being part of the provider network.

So, the bottom line is, to clarify this, we need, I think, to add the word "governance" in the last sentence so that the last phrase says -- well, the last

sentence would read, "This allows providers associated with, but not employed by, government entities to participate in the governance of the co-op." Otherwise, we have ended up saying that employee providers cannot be in the health care delivery system, which is not what we meant to say.

MR. FEEZOR: Questions of Mark? He's making that in the form of a -- an addition to the list of changes that he's authorizing staff, in consult with the Chair's --

MR. HALL: Al, I had one other point. My point is consistent with how this was written in the subcommittee's report on pages -- bottom of 25 and top of 26. So, there were two items, item 25 and item 26 that -- one that dealt with governance and the other that dealt with simply participating -- you know, in the network.

UNIDENTIFIED MAN: Yeah. I'm glad you brought it --

MR. FEEZOR: That's -- let's -- tell you what, instead of making it a part, let's discuss that separate. Questions of Mark with regards to his

motion, which is strictly on what he just talked about on page nine. Is there a preference for some action on Mark's recommendations?

UNIDENTIFIED MAN: I move we adopt.

UNIDENTIFIED MAN: I second it.

MR. FEEZOR: All right. Further debate? All in favor say, "aye."

ALL: Aye.

MR. FEEZOR: Opposed?

(Silent)

MR. FEEZOR: It carries. Now, the -- Mark, if I can pull up the motion you made before we took our 10-minute recess. Your motion was that -- that the -- this Board would approve the report with those issues that we have just summarized to you, those changes authorizing staff and chairs, to make those changes. And, then, let me tell you a little bit about process.

A motion that, between now and the end of the week, each of you will receive electronically, a draft of the report, and if you feel that the drafting has substantially missed, either the discussions presented here -- then, I urge you to certainly, let Barbara and

I -- both Barbara's and I know. And, Annie is the official officer of this panel. And, we will figure out what to do, but absent that, a motion -- a -- as I'm trying to set this up. If you're approval of the report, with staff making the changes that we just highlighted, is satisfactory, then the report will be, in fact, adopted and be sent on to the Secretary.

MR. SIZE: Does the motion need to include (inaudible) editorial (inaudible)?

MR. FEEZOR: Yeah. Yes, you're absolutely right. Thank you, Tim. That's -- I bootstrapped my staff's latitude to do some editorial editing changes and punctuation changes on the -- Mark's proposal before that. So --

MR. CURTIS: Can we further stipulate that we'd leave it to you, and the Barbara's, to decide what to do if somebody has some substantive changes?

MR. FEEZOR: If I -- Rick --

UNIDENTIFIED WOMAN: (Inaudible)

(Off Mike)

(Laughter)

MR. FEEZOR: That's all -- we'll all go to a

mecca somewhere in Colorado. The -- we'll try to do that, but I know the intensity of the work and the feelings that have been invested here, that if it gets -- I have a pretty thin threshold for discomfort. I think we've got a good handle on what we are -- the changes that you have authorized. I don't think -- I looked at both staff members and they didn't blink an eye when -- in terms of what our recollections were.

So, I think we'll be able to do it, but again, it's too important. We're each signing our names to it by virtue of voting affirmatively on this motion. And, so, we may come back to you. I don't want us to delay the process, but we'll make a judgment call on it.

Mike?

MR. PRAMENKO: Could I request that you, at least, hear back from the chairs of the committees prior to the final product?

MR. FEEZOR: Oh, yeah. Yeah. Does everybody understand the motion?

UNIDENTIFIED MAN: Second.

MR. FEEZOR: The motion's made and seconded. Any further discussion?

(Pause)

MR. FEEZOR: All in favor of the motion say,  
"aye."

ALL: Aye.

MR. FEEZOR: All opposed?

(Silent)

MR. FEEZOR: Thank you, David. Let me -- I  
think I left it in my pocketbook. Let me first --  
Barbara, how many of your team are still around?

MS. YONDORF: (Inaudible)

(Off Mike)

MR. FEEZOR: Please, please, please stand up,  
and if there's any outside, have them stick their head  
inside.

MS. YONDORF: (Inaudible)

(Off Mike)

MR. FEEZOR: Stand up folks, don't be bashful,  
all of you. Thank you very much.

(Applause)

MR. FEEZOR: Any other business before this  
Board? There was a -- Barbara, in follow-up, I --  
folks loved this experience so much that they want to

continue it, but we understand that we are at the Secretary's call if there needs to be additional expertise or opinion, collectively or individually. I can say this publicly I guess, without trying to embarrass her. It may be that some of the folks, given some of the talent and knowledge sitting around this -- at least other than at the Chair, in this whole business, that may be one of the best technical -- some of the best technical experts may be sitting around this table.

And, to the extent the Secretary -- we have urged the Secretary to try to make sure that, that technical assistance is available to entities. And, yet, I know each of my colleagues around here, take very seriously, their avoidance of any conflict of interest. And, it may be that the Department, or the Secretary, may have to make a judgment call on whether it's more important to maintain the integrity of this group, on a stand-by basis as needed, or to make these folks, this kind of talent, available to help some of the others that are in this room. In terms of getting going with these enterprises. If I can -- is that --

UNIDENTIFIED MAN: (Inaudible)

(Off Mike)

UNIDENTIFIED MAN: I would just strongly agree with that, that I'd like to know what kind of parameters there are on helping groups, especially on the co-op governance side, as soon as possible.

UNIDENTIFIED MAN: Yeah.

MR. FEEZOR: Any other business before the group? Barbara?

MS. YONDORF: I would just like to offer a special thanks to our Chair, to Allen, he did an unbelievable amount of work. And, I -- it's a rare pleasure to work with someone who's so completely honors the process, and just bent over backwards to make sure that -- you know, everyone was heard and all the i's were dotted and the t's were crossed, which might have driven Barbara Smith crazy, but no.

And, the other person is -- Barbara has been a sheer pleasure to work with, seriously, she and her staff have also made every attempt possible, to respond to everything that we've done. It's been a terrific relationship, and I -- I want to thank both of you.

(Applause)

MR. FEEZOR: We're adjourned.

(Whereupon, the meeting was concluded.)

## CERTIFICATE OF TRANSCRIBER

I, EVE JEMISON, do hereby certify that this transcript was prepared from audio to the best of my ability.

I am neither counsel nor party to this action nor am I interested in the outcome of this action.

EVE JEMISON