February 17, 2011

Via Electronic Mail

Mr. Brian Chiglinsky
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
200 Independence Avenue, SW, Room 738-F
Washington, DC 20201

Re: Comments Regarding the Consumer Operated and Oriented Plan (CO-OP) Program

Dear Mr. Chiglinsky:

The United Food and Commercial Workers International Union ("UFCW") submits these comments to the Consumer Operated and Oriented Plan ("CO-OP") Advisory Board in response to the notice of the Advisory Board meeting to be held February 7, 2011.

The purpose of the Advisory Board, as described in the notice, is to assist the Secretary of Health and Human Services ("HHS"), Congress and the HHS Office of Consumer Information and Insurance Oversight ("OCIIO") in their efforts to foster creation of qualified nonprofit health insurance issuers to offer qualified health plans in the American Health Benefit Exchanges ("Exchanges"), as provided in Section 1322 of the Patient Protection and Affordable Care Act of 2010 ("ACA"). Specifically, the Advisory Board will advise the OCIIO concerning the award of grants and loans to such qualified nonprofit health insurance issuers through the CO-OP Program.

The UFCW is a labor organization that represents working men and women across the United States. UFCW has 1.3 million members working in a range of industries, with the majority working in retail food, meatpacking and poultry, food processing and manufacturing, and retail stores. The UFCW is North America's neighborhood union, and the largest union of young workers, with forty percent of UFCW members under the age of 30. UFCW members are from many backgrounds and walks of life, but come together as the UFCW for the shared goal of achieving the American Dream. The UFCW is about workers helping workers to improve living standards through better wages, benefits, and working conditions. Accordingly, the UFCW supported Congress's and this Administration's efforts to address the deficiencies in our healthcare system through the enactment of the ACA.

Joseph T. Hansen, *International President*
Anthony M. Perrone, *International Secretary-Treasurer*

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For decades, the UFCW, primarily through the establishment of jointly administered labor-management multiemployer health and welfare funds, has provided affordable high quality health care coverage to hundreds of thousands of workers, largely through nonprofit self-insured trusts. Because the provisions of the ACA are so new, the UFCW as well as other labor organizations continue to review the options available under the Exchanges as vehicles to offer competitive health benefits. An efficient nonprofit vehicle offered through the CO-OP program is vital to ensure that individuals receive competitive affordable care under the Exchange. Therefore, as discussed more fully below, the UFCW urges the OCIIO and the Advisory Board to ensure that the development of the CO-OP Program looks to the nonprofit health care model under Section 501(c)(9) of the Internal Revenue Code and recognize in their recommendations the unique role that labor organizations can play in the development of qualified nonprofit issuers on the Exchanges.

1. The CO-OP Program

Under Section 1322 of the ACA, to be eligible to participate in the CO-OP Program, a qualified nonprofit health insurance issuer must: (1) be a nonprofit member corporation that devotes substantially all of its activities to issuing qualified health plans in the individual and small group markets in the state(s) in which it is licensed to do business; (2) meet certain governance standards, operates with a strong consumer focus, complies with state requirements regarding solvency, network adequacy and other rules; and (3) ensure that all profits are used to lower premiums or improve benefits or quality of care for its members. A qualified nonprofit health insurance issuer cannot be a state or local government entity or a previously existing health insurance issuer. An entity that meets the criteria for a qualified nonprofit health insurance issuer would be a tax-exempt entity under a new section of Internal Revenue Code, Section 501(c)(29), established under Section 1322(h) of the ACA.

To assist in the establishment of new entities as qualified nonprofit health insurance issuers, HHS and the OCIIO, with the advice of the Advisory Board, will award to eligible entities loans to assist in meeting start-up costs and grants to assist the entity in meeting state solvency requirements. Priority in the award of loans and grants will be given to entities that can offer qualified health plans on a statewide basis, utilize integrated care models and have significant private funding. The timeline for this program is short: the award of loans and grants must be made by July 1, 2013.

2. An Alternate CO-OP Model: the Voluntary Employees' Beneficiary Association

The UFCW would like to bring to the attention of the Advisory Board that there is currently a well-established system of nonprofit tax-exempt organizations providing affordable health care to hundreds of thousands of Americans that should be an important model for qualified nonprofit health insurance issuers through the CO-OP Program: the Voluntary Employees' Beneficiary Association ("VEBA").

A VEBA is a tax-exempt entity established under a section of the Internal Revenue Code similar to new Section 501(c)(29), Section 501(c)(9). A VEBA is an

employees' association, in which membership is voluntary, and which provides for the payment of life, sick, accident or similar benefits to members (employees and retirees) and their dependents. VEBAs must be nonprofit; no part of the net earnings of the organization may inure to the benefit of any individual other than through the payment of benefits and reasonable administrative expenses.

Labor organizations or joint labor-management organizations (with equal numbers of labor and management representatives on the governing board) have utilized the tax-exempt nonprofit structure of a VEBA for over 50 years to provide innovative, effective, high-quality consumer-oriented health plans for their members. The VEBA model therefore fits both the goals and design of a qualified nonprofit health insurance issuer under Section 1322 of the ACA. Existing VEBAs could be adapted, or new entities created by labor organizations and labor-management organizations experienced in managing VEBAs, as qualified nonprofit health insurance issuers under the CO-OP Program. Labor organizations can provide: (1) critical experience in establishing and managing qualified nonprofit health plans which are consumer operated and oriented; (2) potential members necessary in the early stages of the program to ensure the solvency of nonprofit health insurance issuers; and (3) quick turnaround to meet the July 1, 2013 deadline, as further explained below.

3. Labor Organizations Have Extensive Experience Managing Nonprofit Health Plans Which are Consumer Operated and Oriented.

Labor organizations and joint labor-management organizations have long and varied experience in the critical areas needed to successfully establish and operate a qualified nonprofit health insurance issuer: claims adjudication, negotiation of contracts with network providers and other vendors, managing funding and financial reserves, and providing high quality health care responsive to members' needs. VEBAs are complex organizations and can be quite large. Many VEBAs are "multiemployer plans", with numerous employers contributing on behalf of their employees to a single trust. Most health plans organized as tax-exempt VEBAs provide integrated medical, prescription drug, dental and vision benefits on a "self-insured" or self-funded basis. This means that the governing board, generally a board of trustees who have the expertise to operate a health plan, is actively involved in the administration of the health plan, rather than turning over that responsibility to a for-profit health insurance company. Officers who are elected by the membership of labor organizations typically serve on the board of trustees and therefore have the expertise to operate a health plan.

The VEBA's board of trustees makes all critical decisions with respect to funding, types and levels of health benefits. The board of trustees employs and manages several professionals to assist and advise it in these areas, such as actuaries, benefits consultants, accountants, investment managers and counsel. The VEBA's board of trustees generally hires and oversees a third party administrator to process claims, and contracts with health network providers and pharmacy benefits managers to provide integrated and efficient health benefits, including cost containment features such as disease management, case management, prescription drug formulary programs, and wellness programs. Accordingly, labor organizations that participate in the operation of these VEBAs have

unique experience in managing complex nonprofit health plans and are familiar with the tools to deliver integrated and innovative health care on an affordable basis.

The board of trustees also manages the finances of the self-insured health plan with an array of private funding methods. The plan's funding is generally dependent on employer contributions under a collective bargaining agreement that may either increase with benefit costs or be a fixed rate regardless of benefit costs. These funding commitments are generally over a multiyear period, resulting in little or no flexibility to increase funding during that period. Accordingly, the boards of trustees are accustomed to dealing with limited funding resources, projecting future cost increases, and making decisions to make the most efficient use of the plan's resources. As self-insured health plans, VEBAs are not subject to "medical loss ratios" that apply to insured health plans, but experience shows that VEBAs return a very high percentage of income as benefits to their members. The boards of trustees of VEBAs achieve this result by actively monitoring both actual and projected cost of benefits, and establishing adequate reserves for the VEBA's long-term success. And, of course, as a nonprofit entity, all income from investments and funding from employers and employee contributions are used to pay benefits and the reasonable cost of administrative expenses.

Finally, the officers of labor organizations have unique experience operating nonprofit health plans that focus on, and are responsive to, the consumer. These officers of labor organizations are elected to represent the labor organization membership and to make decisions for their benefit. Accordingly, in the administration of the VEBAs, labor organizations are accustomed to focusing on the needs of their members and ensuring they are providing value-driven and quality health care, within the financial restraints of the economic environment. Indeed, health benefits are a key concern of the union membership. As a result, the plans run by labor organizations have sound quality control and complaint resolutions structures with dedicated administrative offices that are focused on customer service and input. Additionally, the plans have a claims adjudication process that is understandable and fair to the participants. The testimony at the Advisory Board hearing held last month underscored that this type of infrastructure is vitally important for a qualified nonprofit issuer to be successful.

4. Labor Organizations Have The Community Recognition To Create Viable Nonprofit Health Plans On The Exchange

One of the challenges facing the new qualified nonprofit health insurance issuers will be the need to initially attract a sufficient number of members to ensure the health plan's solvency and cost effectiveness. The testimony before the Advisory Board indicated that a group of at least 20,000 – 25,000 members would be needed for a nonprofit health plan to effectively compete on the Exchange. Labor organizations can be a source of that membership. Labor organizations, labor-management organizations, or coalitions of such groups that establish qualified nonprofit health insurance issuers could provide the necessary "critical mass" of membership to meet solvency requirements and provide health care on an affordable basis. In that regard, there are populations such as low wage or part-time workers who may not have access to affordable health care through an existing VEBA but whom labor organizations are in a position to attract to a qualified nonprofit health insurance issuer plan. Due to the

availability of premium subsidies and cost reductions, low-income individuals may seek a qualified health plan on the Exchanges.

Additionally, labor organizations have the relationships with other community groups, such as faith based organizations, to develop the additional critical mass in membership. Labor organizations are in a unique position to direct such individuals to the qualified nonprofit health insurance issuers or the Exchanges, either individually or in groups, through membership education or collective bargaining with employers.

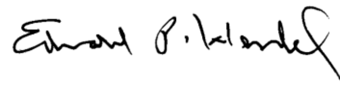
5. Labor Organizations Can Timely Establish Nonprofit Health Plans

Labor organizations and labor-management organizations can quickly direct their resources to establish qualified health plans through qualified nonprofit health insurance issuers. The possible participation of existing VEBAs in the CO-OP Program (for example, reorganized as Section 501(c)(29) tax-exempt entities) would mean that they can bring with them existing relationships with network providers, third party claims administrators, actuaries, financial advisers, and other resources necessary to timely establish a qualified nonprofit health plan offered through the Exchanges. Alternatively, labor organizations or coalitions of labor organizations can set up new entities as qualified nonprofit health insurance issuers under the CO-OP Program by utilizing their extensive experience in establishing and operating health plans and their experience with crucial vendors and service providers, in less time than other newly formed nonprofits. Labor organizations thus have the resources to meet the critical deadline for formation of viable new entities and the award of loans and grants by July 1, 2013.

For the reasons discussed above – experience, membership and timeliness – we urge the Advisory Board to take into account the advantages that labor organizations can bring to the establishment of successful qualified nonprofit health insurance issuers. We request that the Advisory Board recommend including the VEBA structure as the model for a qualified nonprofit health issuer, and giving labor organizations with the demonstrated expertise in the area special consideration in the awarding of loans and grants to form qualified non-profit health plans under the CO-OP Program. The establishment of nonprofit health plans formed by labor organizations, joint labor-management organizations, or coalitions of these groups, and their participation in the Exchanges would help ensure the success of the nonprofit model and the delivery of affordable high quality health care to millions of Americans.

Thank you for the opportunity to provide comments on these important issues. The governing body of the UFCW, the Executive Board, is holding its annual meeting on February 7, 2011, and a representative therefore will not be able to attend the Advisory Board's meeting of that same date to give oral testimony. However, we would be pleased to meet with you at another mutually convenient time and provide any additional information you may require.

Sincerely,



Edward P. Wendel
UFCW General Counsel