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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

January 19, 2016

Mr. Andrew Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Acting Administrator Slavitt:

The Committee on Homeland Security and Governmental Affairs is examining the Consumer Operated and Oriented Plans (CO-OPs) developed under the Patient Protection and Affordable Care Act (ACA). Pursuant to the ACA's CO-OP program, the Centers for Medicare and Medicaid Services (CMS) disbursed more than \$2.4 billion in low-interest federal loans to 23 CO-OPs.¹ Beginning January 1, 2014, these 23 CO-OPs offered health coverage in 23 states² to approximately 475,000 members—approximately 347,000 in individual policies and 131,000 in group coverage.³ In less than two years, 12 CO-OPs have closed and more are in danger of failing,⁴ raising concerns about how these CO-OPs will repay their loans.⁵ Accordingly, I write to gain a better understanding of CMS's oversight of the CO-OP program and its efforts to minimize further taxpayer losses.

The ACA established the CO-OP program to offer low-cost, private health care coverage to individuals and small businesses.⁶ CO-OPs can operate on a local, state, or national level,⁷ and must be licensed in each State in which they operate.⁸ Under the CO-OP program, CMS offered low-interest loans to eligible private, nonprofit groups to assist them in setting up and

¹ DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF INSPECTOR GENERAL, ACTUAL ENROLLMENT AND PROFITABILITY WAS LOWER THAN PROJECTIONS MADE BY THE CONSUMER OPERATED AND ORIENTED PLANS AND MIGHT AFFECT THEIR ABILITY TO REPAY LOANS PROVIDED UNDER THE AFFORDABLE CARE ACT 3-4 (2015) [hereinafter HHS OIG REPORT].

² *Id.* at 4. Two CO-OPs offered health insurance in Oregon—Oregon's Health CO-OP and Health Republic Insurance of Oregon. One CO-OP offered health insurance in Iowa and Nebraska—CoOpportunity Health. *Id.* at 7 nn. 22, 24, 25.

³ GRACE-MARIE TURNER & THOMAS P. MILLER, GALEN INSTITUTE, AMERICAN ENTERPRISE INSTITUTE, OBAMACARE CO-OPS: CAUSE CELEBRE OR COSTLY CONUNDRUM? at 4 (2015) [hereinafter GALEN & AEI REPORT].

⁴ Stephanie Armour, *More Health Co-ops Face Collapse*, WALL ST. J. (Oct. 16, 2015, 6:35 PM), <http://www.wsj.com/articles/more-health-co-ops-face-collapse-1445034912>.

⁵ See, e.g., HHS OIG REPORT, *supra* note 1, at 1; Armour, *supra* note 4; Adrian Smith, *ObamaCare's Cascading Co-op Failures*, WALL ST. J. (Nov. 2, 2015, 7:16 PM), <http://www.wsj.com/articles/obamacares-cascading-co-op-failures-1446509803?alg=y>.

⁶ HHS OIG REPORT, *supra* note 1, at 1; GALEN & AEI REPORT, *supra* note 3, at 3; Armour, *supra* note 4.

⁷ HHS OIG REPORT, *supra* note 1, at 1.

⁸ *New Federal Loan Program Helps Nonprofits Create Customer-Driven Health Insurers*, CMS.GOV, https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/coop_final_rule.html (last visited Nov. 23, 2015).

maintaining health insurance CO-OPs.⁹ These loans came in two forms. Startup loans were designed to assist with approved costs for beginning operations and must be repaid within five years.¹⁰ Solvency loans were designed to assist applicants with meeting capital reserve requirements in the states where they sought a license and must be repaid within fifteen years.¹¹

From the outset, the CO-OPs have grappled with weak financial performance and low enrollment levels. A July 2015 Department of Health and Human Services Office of Inspector General (HHS OIG) report found that 21 of the 23 CO-OPs incurred net losses as of December 31, 2014, and more than half of the CO-OPs had “considerably lower” enrollment than initial annual projections.¹²

HHS OIG reported that only one CO-OP operated at a net gain from January 1 through December 31, 2014.¹³ The majority of the CO-OPs projected that they would incur significant losses during the startup period,¹⁴ but 19 CO-OPs underestimated these losses and incurred net losses that exceeded their projections.¹⁵ The report attributed the significant net losses to “[l]ow enrollment and claims’ expense[s] that exceeded premium income,” which the report in turn attributed to “higher-than-estimated enrollment of members with more expensive health conditions, enrolling fewer-than-expected young and healthy members, or inaccurate pricing of health insurance premiums.”¹⁶ Even CO-OPs with enrollment rates that met or exceeded projections incurred significant losses. These CO-OPs offered lower-priced insurance plans than competitors, which led to higher-than-projected enrollments,¹⁷ but also resulted in premium incomes that did not sufficiently cover medical claims costs.¹⁸ Only four of the ten CO-OPs with enrollment that exceeded projections remain open.¹⁹

Most recently, Maine’s insurance CO-OP, Community Health Options, announced that it will suspend sales of individual plans for 2016.²⁰ The CO-OP cited the “significant enrollment

⁹ *Id.*

¹⁰ HHS OIG REPORT, *supra* note 1, at 2.

¹¹ *Id.*

¹² *Id.* at i.

¹³ *Id.* at 5. Twenty-one of 23 CO-OPs incurred net losses from January 1 to December 31, 2014; data was not available for the Iowa/Nebraska CO-OP because the Iowa Insurance Commissioner took control of the CO-OP because of financial concerns. The CO-OP was liquidated in March 2015. *Id.* at 8.

¹⁴ *Id.* at 9.

¹⁵ *Id.*

¹⁶ *Id.* at 8.

¹⁷ GALEN & AEI REPORT, *supra* note 3; HHS OIG REPORT, *supra* note 1, at 6.

¹⁸ Akash Chougule, *Obamacare Enters a Downward Spiral as Co-ops Fail and Enrollment Slows*, NATIONAL JOURNAL (Oct. 23, 2015, 4:00 AM), <http://www.nationalreview.com/article/425953/obamacare-health-insurance-co-ops-failing>.

¹⁹ HHS OIG REPORT, *supra* note 1, at 7; Amy Goldstein, *More Than Half of ACA Co-ops Now out of Insurance Marketplaces*, WASH. POST (Nov. 3, 2015), https://www.washingtonpost.com/national/health-science/more-than-half-of-aca-co-ops-now-out-of-insurance-market-places/2015/11/03/5ba95b86-824b-11e5-9afb-0c971f713d0c_story.html.

²⁰ Tom Howell Jr., *Obamacare Co-op in Maine to Suspend 2015 Enrollment*, WASH. TIMES (Dec. 9, 2015), <http://www.washingtontimes.com/news/2015/dec/9/obamacare-co-op-maine-suspend-2016-enrollment/?page=all>.

growth” and “higher than expected claims in 2015” as reasons for its decision.²¹ In other words, the CO-OP set unsustainably low prices and now cannot afford to cover its members. In 2014, Community Health Options stood as the only profitable CO-OP in the country, but it now projects \$18 million in losses for 2015.²²

HHS OIG further cautioned that “low enrollments and net losses might limit the ability of some CO-OPs to repay startup and solvency loans,”²³ and recommended that CMS “pursue available remedies for recovery of funds from terminated CO-OPs.”²⁴ CMS concurred with the recommendation and replied that “[l]oan recipients that fail to make loan payments consistent with the repayment schedule established in their loan agreement will be subject to any and all remedies available to CMS under law to collect the debt.”²⁵

CMS’s oversight of the troubled CO-OP plan has been plagued by a fundamental lack of transparency with the American public and Congress. CMS has reportedly placed 11 operational CO-OPs on an “enhanced oversight” list, but has declined to disclose which CO-OPs it placed on the list or its rationale for doing so.²⁶ CMS has authority to place a CO-OP on enhanced oversight if the CO-OP underperforms or experiences significant difficulty meeting program milestones.²⁷ When a CO-OP is placed on enhanced oversight, CMS conducts more frequent and thorough reviews of the CO-OP’s operations and financial status, and CMS can impose a corrective action plan on the CO-OP.²⁸ According to news reports, CMS “gave no grounds for withholding the information from either the public or Congress.”²⁹

The number of failed CO-OPs and the anticipation of additional closures raise concerns about how CMS will recoup the \$2.4 billion it loaned to the 23 CO-OPs. The CO-OP agreements provide that upon termination of a loan, the CO-OP “forfeits all unused loan funds” and “must repay any unused loan funds to CMS within 60 days following the resolution of any outstanding debts and run out of outstanding claim obligations or immediately following the resolution of any outstanding debts.”³⁰ The CO-OP must also repay the used loan funds, interest, and any applicable penalties, as provided in the loan agreement.³¹ However, observers caution that failed CO-OPs likely do not have funds available to cover outstanding claims or to repay their loans to CMS. Rather, “[s]urviving companies—or actually their policy holders—will pay for the co-ops’ losses, ultimately in the form of higher premiums.”³²

²¹ *Open Enrollment Update*, Community Health Options, <http://www.healthoptions.org/update> (last visited Dec. 10, 2015).

²² Howell, *supra* note 20.

²³ HHS OIG REPORT, *supra* note 1, at 5.

²⁴ *Id.* at 11.

²⁵ Letter from Andrew M. Slavitt, Acting Admin’r, CMS, to Daniel R. Levinson, Inspector General, HHS OIG (June 29, 2015).

²⁶ Richard Pollock, *Feds Hide Secret List of 11 Staggering Obamacare Insurers*, DAILY CALLER (Oct. 19, 2015, 12:33 AM), <http://dailycaller.com/2015/10/19/feds-hide-secret-list-of-11-staggering-obamacare-insurers/>.

²⁷ HHS OIG REPORT, *supra* note 1.

²⁸ *Id.*

²⁹ Pollock, *supra* note 26.

³⁰ HHS OIG REPORT, *supra* note 1, at 14.

³¹ *Id.*

³² GALEN & AEI REPORT, *supra* note 3, at 7.

For example, CoOpportunity Health, the CO-OP established in Iowa and Nebraska that was liquidated in March 2015, lacks sufficient funds to cover outstanding medical claims.³³ Consequently, the Iowa and Nebraska Life and Health Insurance Guaranty Associations, which are funded by insurers in the states, must pay more than \$80 million to cover these costs.³⁴ According to health law attorney William Schiffbauer, “[t]he size of the unpaid claims necessitated the association to secure a line of credit from a commercial bank with additional guarantees.”³⁵ In addition, CMS has reportedly not recovered loans from a CO-OP that Vermont’s insurance commissioner denied a license to in 2013 on the basis that the CO-OP failed to demonstrate how it would sustain solvency. According to the Galen Institute, “HHS is calling for repayment, but no information is available about how much, if any, of the money has been or will be returned to the federal treasury.”³⁶

To date, 12 of the 23 CO-OPs have closed, accounting for \$1.24 billion in federal loans.³⁷ To understand how CMS intends to minimize further losses and recoup as much as possible of the \$2.4 billion it loaned to CO-OPs, I ask that you please provide the following information and materials:

1. Please provide a copy of the Loan Agreements between CMS and each CO-OP.
2. Please explain how CMS determined which CO-OP applicants received loans.
 - a. Please provide all material prepared by Milliman Inc. referring or relating to CO-OP applications.
 - b. Please explain how Milliman Inc. received compensation for its services.
3. Please provide the following information for each CO-OP:
 - a. The amount CMS loaned to the CO-OP, including startup and solvency loans.

³³ Smith, *supra* note 5.

³⁴ *Id.*

³⁵ GALEN & AEI REPORT, *supra* note 3, at 7.

³⁶ *Id.* at 5.

³⁷ *ObamaCare’s Failure Contagion*, WALL ST. J. (Nov. 9, 2015, 7:41 PM), <http://www.wsj.com/articles/obamacares-failure-contagion-1447116079?cb=logged0.8070060468744487>. The following CO-OPs, with their respective loan amounts in parentheses, have closed: Meritus Health Partners in Arizona (\$93.3 million), Colorado Health Insurance Cooperative, Inc. (\$72.3 million), CoOpportunity Health in Iowa and Nebraska (\$145.3 million), Kentucky Health Cooperative, Inc. (\$146.5 million), Louisiana Health Cooperative, Inc. (\$65.8 million), Michigan Consumer’s Healthcare CO-OP (\$71.5 million), Nevada Health Cooperative (\$65.9 million), Health Republic Insurance of New York (\$265.1 million), Health Republic Insurance of Oregon (\$60.6 million), Consumer’s Choice Health Insurance Company in South Carolina (\$87.6 million), Community Health Alliance Mutual Insurance Company in Tennessee (\$73.3 million), and Arches Mutual Insurance Company in Utah (\$89.7 million).

- b. The amount of the loan that the CO-OP has spent and the details of those expenditures.
 - c. The amount of the loan that remains unspent.
 - d. CMS's current estimate of the percentage of each loan it believes will be repaid.
4. Please explain the actions CMS has taken or plans to take to immediately recover unused funds, used funds, interest, and any applicable penalties.
 - a. In response to the HHS OIG report, CMS wrote "[l]oan recipients that fail to make loan payments consistent with the repayment schedule established in their loan agreement will be subject to any and all remedies available to CMS under law to collect the debt."³⁸ Please explain the remedies that CMS will pursue to collect unpaid loan obligations.
 - b. Please explain the steps CMS plans to take to recoup loan payments from CO-OPs that have closed.
5. CMS has reportedly placed 11 operational CO-OPs on "enhanced oversight."³⁹ Please identify these 11 CO-OPs, and provide the following information:
 - a. Please explain the factors that CMS utilizes when it considers placing a CO-OP on enhanced oversight. Please explain the type of underperformance and difficulties in meeting milestones that warrant placement on enhanced oversight.
 - b. Please describe the "corrective actions" that CMS can impose on CO-OPs. Please explain the factors that CMS utilizes when it considers imposing a corrective action plan on a CO-OP. Please explain the type of underperformance and difficulties in meeting milestone that warrant a corrective action plan.
 - c. Please provide the correspondence that each CO-OP received notifying the CO-OP that CMS has placed it on enhanced oversight.
 - d. Please provide a list of CO-OPs for which CMS has issued corrective actions plans. Please provide the corrective action plan for each CO-OP that has been placed on a corrective action plan.
 - e. Please describe how CMS monitors the ongoing performance of CO-OPs that it has placed on enhanced oversight and for which it has issued corrective action

³⁸ Letter from Andrew M. Slavitt, Acting Admin'r, CMS, to Daniel R. Levinson, Inspector General, HHS OIG (June 29, 2015).

³⁹ See Pollock, *supra* note 26.

plans. Please provide detailed information relating to changes in the financial status of each CO-OP that is currently on enhanced oversight.

6. Please explain how CMS will ensure it recoups the loans it made to the remaining operational CO-OPs.
 - a. How much of the \$2.4 billion outstanding loan balance does CMS currently expect to be repaid?
 - b. Has CMS developed an estimate of loan losses?
7. Does CMS plan to grant additional solvency loans to any of the remaining operational CO-OPs?
 - a. If so, please describe how CMS will determine which CO-OPs will receive these loans.
 - b. Please describe how CMS will determine how much additional money to loan to the CO-OPs.
 - c. Please explain how much additional money, in total and per CO-OP, that CMS plans to loan to the CO-OPs.

Please produce this material as soon as possible, but by no later than 5:00 p.m. on February 2, 2016.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency and economy of operations of all branches of the Government.”⁴⁰ Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine “the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.”⁴¹

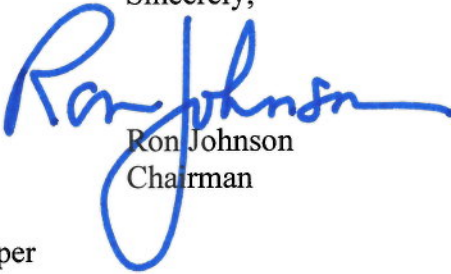
⁴⁰ S. Res. 73 § 12, 114th Cong. (2015).

⁴¹ S. Res. 73 § 12, 114th Cong. (2015).

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For purposes of this request, please refer to the instructions and definitions contained in the enclosure. When delivering production sets, please produce to Majority staff in room 340 of the Dirksen Senate Office Building and to Minority staff in room 613 of the Hart Senate Office Building. If you have any questions about this request, please contact Samantha Brennan or Kyle Brosnan of the Committee Staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Minority Member

Enclosure

Instructions for Responding to a Committee Request

A. Responding to a Request for Documents

1. In complying with the Committee's request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request shall be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and .tif file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

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- e. Alternatively if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable, shall be produced in text searchable Portable Document Format (".pdf") format. Spreadsheets shall also be provided in their native form. Audio and video files shall be produced in their native format, although picture files associated with email or word processing programs shall be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
 7. Documents produced in response to the request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
 9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
 11. All documents shall be Bates-stamped sequentially and produced sequentially. Each page shall bear a unique Bates number.
 12. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 344 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided on that date.

Instructions for Responding to a Committee Request

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
18. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, you are required to answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Persons that knowingly withhold requested information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request shall be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests shall be made in writing and shall be signed by you, your counsel, or a duly authorized designee.
4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any

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other person who has possession, custody, or control of your proprietary knowledge, information, or facts.

6. It shall not be a basis for refusal to provide knowledge, information, or facts that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it has not been known by the return date, shall be provided immediately upon subsequent discovery.
8. Two sets of responses shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies shall be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 344 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided on that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to provide the information that would be responsive as if the date or other descriptive detail was correct.
12. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

C. Definitions

1. The term "document" in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and

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investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.
6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

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