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**National Council of Agricultural Employers
Comments submitted to Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
January 6, 2011**

These comments are submitted by Western Growers on behalf of the National Council of Agricultural Employers (NCAE) which represents agricultural employers and agricultural employer associations and is the principal voice for agricultural employer labor issues in the United States. NCAE's members employ approximately 75 percent of the U.S. agricultural workforce.

Western Growers is an agricultural trade association whose members grow, pack and ship almost 50 percent of the annual U.S. production of fresh fruit, vegetables and tree nuts. Western Growers is also a not-for-profit agricultural health benefits provider with more than 50 years experience in tailoring benefit plans to meet the needs of rural employers and their employees. We have the privilege of coordinating the NCAE health care reform working group.

For almost two years the National Council of Agricultural Employers (NCAE) has worked to ensure that health care reform legislation would enable agricultural employers to continue to provide health benefits for their employees and allow those who currently cannot provide coverage mechanisms to do so. During the development of the Patient Protection Act and the subsequent regulatory implementation process, NCAE has raised the unique cultural, administrative and economic challenges that the PPA presents for the seasonal agricultural industry and has proposed or contemplated a number of approaches to address these hurdles including on the subject of Co-Ops.

With regard to produce, our agricultural businesses depend on season workers. Crops are grown, cultivated and harvested outdoors by seasonal farm employees. Currently only 10-15 percent of seasonal workers across the United States are provided basic health care benefits by their employers.

Providing health care coverage to agricultural employees is administratively challenging because of the transitory nature of many farm related jobs, which may last from a few days to six months. In addition, an employee may work for multiple employers in a year across state lines. Moreover there is often high turnover with an employer issuing up to 5 times as many W2s as the actual number of positions they employ. A significant percentage of the seasonal agricultural workforce are H2A visa guest workers, who are residents of foreign countries, and some of whom bring their own health care coverage with them.

Nonetheless, the PPA appears to apply to these employees. Their employers are at a loss of how the PPA can be implemented for this population.

From an economic perspective, agriculture has unpredictable revenue cycles, and unlike other industries, we are price-takers, not price-setters. As such, the ability to pass along increased costs is very limited because of this aspect of our industry. Nationally, health care plans that can meet these challenges are largely unavailable, or require premiums that are unaffordable to farmers and their workforce.

These significant administrative and economic challenges are compounded by the cultural challenges associated with providing health care coverage to the seasonal agriculture workforce. Immigration status will likely preclude seasonal workers who are not currently provided basic care from accessing coverage through a state-based exchange. Paying anything for health care costs including insurance premiums and doctor's visits is inconsistent with the commitment many of these employees have to providing for their families here or abroad. Seasonal agricultural employers have tried for decades to provide basic coverage at an extremely low cost to their seasonal workers who are simply uninterested in spending any amount for this purpose.

In an effort to meet the challenges briefly described above, NCAE is considering the utility and possibility of establishing an agricultural Co-Op under the PPA. We would appreciate the advisory panel's consideration of the following points:

- Can the law or implementing regulation allow for the establishment of an agricultural/rural focused Co-Op, at the state and/or national level?
- Because the seasonal agricultural employees will not use a state-based exchange established under the PPA, a rural Co-Op that enables seasonal employees to access coverage will also need to operate outside of an exchange.
- Will the funding that the PPA provides for the establishment of Co-Ops be available for the establishment of a state or national agricultural/rural Co-Op? Both within and outside of an exchange?
- In addition, entities eligible to establish Co-Ops or convert into Co-Ops should include group health plans.
- With the establishment of the waiver process that allows for current annual dollar value of benefits to be retained, Western Growers members will be able to continue to provide health care benefits to approximately 77,000 employees in 2011. The waivers will form an essential component of any seasonal agricultural health benefits mechanism including a Co-Op.
- We understand that the establishment of geographic sub-exchange allowed for in the PPA may include the possibility of an agricultural/rural sub-exchange. How would a sub-exchange relate to a Co-Op? Could an agricultural Co-Op be part of a subexchange mechanism?