## Congress of the United States Washington, DC 20515

July 31, 2012

The Honorable Gene Dodaro Comptroller General U.S. Government Accountability Office 441 G Street, N.W. Washington, D.C. 20548

Dear Comptroller General Dodaro:

We are writing to seek your review of whether the recent Information Memorandum issued by the U.S. Department of Health and Human Services (HHS) on waiving work requirements under the Temporary Assistance for Needy Families (TANF) program constitutes a rule for purposes of the Congressional Review Act, among other issues.

On July 12, 2012, HHS issued a TANF Information Memorandum<sup>[1]</sup> to notify States of HHS' willingness to issue waivers of TANF work requirements, pursuant to authority under section 1115 of the Social Security Act.<sup>[2]</sup> Under section 1115, HHS has the authority in certain circumstances to waive compliance with the requirements of section 402 of the Social Security Act relating to State TANF plans.<sup>[3]</sup> In its Information Memorandum, HHS asserted that the agency has the authority to waive section 407 work requirements, based on the requirement in section 402(a)(1)(A)(iii) that States' TANF plans must outline how the state will ensure that TANF recipients will engage in work activities. HHS informed States that it would use this authority to allow them to test various strategies, policies, and procedures at odds with longstanding program requirements specified in section 407.

We have serious concerns about HHS' interpretation and the resulting dramatic expansion of its waiver authority, especially involving the critical work requirements at the heart of progress in reforming welfare programs since 1996. We are writing to request that the Government Accountability Office review several key issues related to this Information Memorandum. Specifically, we would like GAO to answer the following questions.

- 1) Is the Information Memorandum issued by HHS on July 12, 2012, a "rule" for purposes of the Congressional Review Act, codified at 5 U.S.C. §§ 801-808, and what are the implications of this finding in terms of Congressional review of the HHS Information Memorandum?
- 2) Since the TANF program began in 1996, has any prior Secretary of HHS suggested that he or she has the authority to waive section 407 work requirements?

3) Since the TANF program began in 1996, have any States submitted waiver requests involving work requirements in section 407 of the Social Security Act or any other provision of the TANF program, and if so what was HHS' response to these requests?

We request an answer to question 1 by no later than September 4, 2012, and would also appreciate responses to questions 2 and 3 as soon as possible. If you have any questions about this request, please have your staff contact Becky Shipp of the Senate Finance Committee staff at 202-224-4743 or Matt Weidinger of the Ways and Means Committee staff at 202-225-1025. We appreciate your assistance in this request.

Orrin G. Hatch

Ranking Member Senate Finance Committee Sincerel

Chairman

House Committee on Ways and Means

<sup>[1]</sup> TANF-ACF-IM-2012-03.

<sup>[2]</sup> Codified at 42 U.S.C. § 1315.

<sup>[3]</sup> Section 1115 also authorizes the Secretary to waive compliance with certain other requirements of the Social Security Act not related to TANF.