

Congress of the United States
Washington, DC 20515

September 21, 2012

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

On July 12, 2012 the Department of Health and Human Services (“Department”) issued an Information Memorandum (“IM”) regarding the Temporary Assistance for Needy Families (“TANF”) program. This IM attempts to explain how states can seek “waivers” of work requirements for welfare recipients. This IM was not in response to any recent change in TANF law, and in our view it critically undermines the work-focus of the bipartisan 1996 welfare reform.

Earlier this month, on September 4, 2012, the Government Accountability Office (“GAO”) determined that this IM constituted a rule for the purposes of the Congressional Review Act (“CRA”), thereby providing Congress with the opportunity to halt the implementation of the policy changes embodied in the IM. According to their letter designating the IM as a rule for CRA purposes, the GAO requested the views of your Department’s General Counsel, as to whether the July 12 IM was a rule for the purposes of the CRA. The GAO letter to us summarizes the HHS argument as follows: “the Information Memorandum was issued as a non-binding guidance document and...HHS contends guidance documents do not need to be submitted pursuant to the CRA.” GAO disagreed with the conclusion reached by HHS and noted that HHS provided, “no support for this position.”

We have a number of questions regarding the development of this IM by the Department, as well as the Department’s apparent determination that the IM was not in fact a rule subject to the CRA. To address these concerns, we respectfully request that you provide all records related to the following to our offices no later than October 25, 2012:

- 1) The Department’s response to the GAO regarding the determination of the IM as a rule applicable to the CRA;
- 2) All correspondence, including email, between and/or among the Department’s Office of General Counsel (“OGC”) and your Counselor for Human Services Policy and the Deputy Assistant Secretary for Policy at the Administration for Children and Families relating to the determination of the IM as a rule applicable to the CRA; and

- 3) All correspondence, including email, between and/or among the Department's Office of General Counsel ("OGC") and your Counselor for Human Services Policy and the Deputy Assistant Secretary for Policy at the Administration for Children and Families relating to the development of the IM.

Should you have any questions, please contact Becky Shipp at 202-224-4743 or Matt Weidinger at 202-225-3625 in our offices. Thank you for your prompt attention to this matter.

Sincerely,



Senator Orrin G. Hatch
Ranking Member
Senate Finance Committee



Representative Dave Camp
Chairman
House Committee on Ways and Means