

Congress of the United States
Washington, DC 20515

April 15, 2011

The Hon. Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
Hubert Humphrey Building Room 416 G

Dear Secretary Sebelius:

We are writing to request your written response to several questions regarding your Department's implementation of the Community Living Assistance Services and Supports (CLASS) program as established in the Patient Protection and Affordable Care Act, signed into law on March 23, 2010.

You recently called the CLASS program, "unsustainable absent massive taxpayer infusion" of funds, but you have also asserted considerable power to restructure the program. You have mentioned three specific areas for changes: the automatic-enrollment feature, premium amounts, and minimum-earnings requirements. On the earnings requirements as established in law, you recently told lawmakers you plan to exclude lower-income Americans from the program, despite language Congress inserted in the law that grants them eligibility for the CLASS program.

According to the enclosed Congressional Research Service (CRS) memo, the minimum earnings requirement in the CLASS program "provides that enrollees must have earned, with respect to at least three calendar years during the first 60 months for which the individual has paid premiums under the program, at least the amount necessary to be credited with a quarter of coverage under the Social Security Act." In the same memo, CRS warns that the Courts may find the statutory language included in PPACA, "would not provide the Secretary with sufficient authority to raise the minimum earnings requirement for eligible beneficiaries under the CLASS Act." In reviewing the lack of Secretarial authority to make changes to the program's earning requirements, actuaries have warned successful lawsuits by plaintiffs challenging the Secretary's authority could be catastrophic for the CLASS program's solvency.

We respectfully request that you respond to the following questions in writing by May 1, 2011:

- What exact changes are being considered by your Department to achieve CLASS program solvency?
- Does HHS believe it can increase the nominal five-dollar premium for individuals below the federal poverty line?

- Does HHS believe it can change the automatic-enrollment feature and/or the minimum-earnings requirements as defined in statute?
- In light of the aforementioned CRS report, does HHS believe it has authority under Section 3208 to change the statutory definition of eligible beneficiary enacted in Section 3202?
- If you believe you have such authority, then what do you believe the purpose and reason was for including the definition of eligible beneficiary in statute?
- If you believe HHS has the ability to move forward in making changes to the program's structure through what you consider statutory flexibility, then please explain where in the statute there is flexibility and what you believe "a quarter of coverage under section 213(d) of the Social Security Act" means when determining eligibility for the CLASS program?
- If your judgment is counter to that of the CRS and you believe you can increase the minimum-earnings requirements, will the CLASS actuary consider the potential for lawsuits when setting initial premiums in the three CLASS plans you will review? As you may know, the American Academy of Actuaries requires actuaries to review and consider such risks when pricing initial premium rates.

We appreciate your attention to this matter and look forward to your response.

Sincerely,

W. Rostenkowski / Bill Bradley / Daniel Lipinski
 Mel Stroy / Tom Griffin / Steve King
 Jay Byrnes / Ken Marcell / Bill Posey
 Bob E. Latta / Pat Tiberius / Eric Swalley
 Ron Paul / Ki. B. Bynum / Marsha Blackburn
 Gregg Harper / Bob Witt / David P. Roe

Dear Sir,
 I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the above mentioned matter.
 I have conferred with the Board of Directors and they have decided to grant you the sum of \$1000.00 as a loan.
 The same will be paid to you in three equal installments of \$333.33 each, on the 1st day of each month commencing on the 1st day of the next month.
 I am, Sir, very respectfully,
 Yours,
 J. H. [Name]
 [Address]

Wm ^{TN-4} Sam Cole Amie J. Jager ^{CA-03}

Jim Walby ^{MI-02} Jan Admilt Joe Terry

Ed Walsh ^{IL-04} Robert M. Mello Scott Garrett

Charles J. Fleisch ^{TN-3} Mac Terry Tom Murray

Jan Paul Jo Bonner Frank C. Munt ^{NH-01}

Chip [unclear] Blake Forstheld

Sam Kelly ^{IL-17} Jerry Long ^{MO-7}

Gib Bag Rodney Clepanda

K. M. [unclear] ^{TX-11}

Lynn Albert

Kent Stanks

Louie Lehman

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