

Congress of the United States
Washington, DC 20515

October 20, 2011

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20515

Dear Madam Secretary:

On September 22, 2011, we sent you a letter asking two dozen questions about HHS' plans to implement the Community Living Assistance Services and Supports (CLASS) Program, the legal basis for changes to CLASS' framework that HHS considered, and intra-agency communications regarding CLASS' sustainability.¹ We wrote:

While your department works to implement this deeply flawed program, it is imperative that the actions you take are within your Congressional authority.... We believe that, since 18 months have passed since the PPACA became law, your department has had more than sufficient time to present the American people with the specifics of your plan to create a sustainable CLASS program. It is vital that Congress understands the changes you are considering making to CLASS.²

On October 6, 2011, rather than providing written responses to our questions, you responded by stating that a forthcoming report would answer many of our questions.³ When "A Report on the Actuarial, Marketing, and Legal Analyses of the CLASS Program" was released on October 14, 2011 you announced that "despite [your] best analytical efforts, [you] do not see a viable path forward for CLASS implementation at this time."⁴ The basis for your decision was that you lacked the legal authority to make certain structural changes to the program and that even these structural changes might not be enough to make the program sustainable.⁵

¹ Letter from Darrell Issa, Fred Upton, Trey Gowdy, Joe Pitts, Cliff Stearns, Denny Rehberg, Charles Boustany, Michael Burgess, Phil Gingrey, John Thune, Jeff Sessions, Lindsey Graham, and Tom Coburn to Secretary Sebelius, September 22, 2011, available at

<http://republicans.energycommerce.house.gov/Media/file/PDFs/092211jointltrtohhsclass.pdf>.

² *Id.*

³ Letter from Jim Esquea, Assistant Secretary for Legislation, to Darrell Issa, October 6, 2011.

⁴ See Secretary Sebelius letter to Speaker of the House John Boehner, October 14, 2011.

⁵ *Id.*

Although we are pleased that it appears taxpayers will not be on the hook for bailing out a failed CLASS, private sector and government actuaries expressed these concerns for about a year *before* the Patient Protection and Affordable Care Act (PPACA) became law.⁶ Indeed, an HHS internal analysis prepared three months before the PPACA was signed into law expressed concern that “it is possible the authority in the bill to modify premiums will not be sufficient to ensure [CLASS] is sustainable.”⁷ Despite these concerns, before the Energy and Commerce Health Subcommittee on March 3, 2011, you stated that “[CLASS] was unsustainable as the legislation was crafted, but I was given considerable flexibility and we are in the process of making, I think, the changes that will meet the criteria outlined in the law, which is, that it be sustainable without taxpayer support.”⁸ The decision to shut down the CLASS program indicates that you did not have the legal authority you purported to have.

Your decision and the HHS report released on October 14th do not answer all of our questions and concerns about CLASS and the process that HHS was using to implement it. Therefore, we reiterate several of the questions we asked in our September 22nd letter. Pursuant to Rules X and XI of the United States House of Representatives, the Oversight and Government Reform Committee, the Energy and Commerce Committee, the Appropriations Committee, and the Ways and Means Subcommittee on Oversight request that you provide answers to the following questions. In preparing your answers to these questions, please answer each question individually and include the text of each question along with your response.

1. As of September 15, 2011, how many people were employed by the Administration of Aging to work on the CLASS program, either in a full-time or part-time capacity? Please list each person and their primary responsibilities. As of October 17, 2011, have these

⁶ In a May 19, 2009 email, CMS Chief Actuary Richard Foster wrote: “We skimmed through the draft legislation and offered the following preliminary comments. Nonsubsidized, voluntary insurance programs generally involve substantial “antiselection” by those who choose to participate. As summarized below, this could be a terminal problem for this proposal. The program is intended to be “actuarially sound,” but at first glance this goal may be impossible. Due to the limited scope of the insurance coverage, the voluntary CLASS plan would probably not attract many participants other than individuals who already meet the criteria to qualify as beneficiaries.... The resulting substantial premium increases required to prevent fund exhaustion would likely reduce the number of participants, and a classic “assessment spiral” or “insurance death spiral” would ensue.” The American Academy of Actuaries began criticizing the CLASS program starting in a July 22, 2009 report, available at http://www.actuarv.org/pdf/health/class_july09.pdf.

⁷ CLASS: Suggested Technical Corrections, Last Updated 01/04/10 available at <http://energycommerce.house.gov/media/file/PDFs/CLASS/ExhibitQ.pdf>.

⁸ Secretary Kathleen Sebelius, Hearing for “FY 2012 HHS Budget and the Implementation of Public Laws 111-148 and 111-152,” United States Senate Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, March 30, 2011.

people been reassigned or are they leaving HHS? For the people who have been reassigned, what have they been reassigned to work on?

2. Before the Senate Finance Committee on February 15, 2011, you testified that “[CLASS] is designed for people to set aside their own money and then draw out their own money with no taxpayer support. So, the framework is not perhaps designed to mandate that only a few options could be available since people are basically spending their own money.”⁹ You also expressed this same view before the House Energy and Commerce Committee on February 16, 2011.¹⁰

Was this, and is this currently, your interpretation of the CLASS program? Was the intent for individuals to set aside and spend only their own money through CLASS? Or is CLASS meant to be an insurance product where the majority of participants will **not** eventually collect benefits, at least not nearly as large as the premiums they had paid?

3. Why did you support the inclusion of the CLASS program into the PPACA in a July 2009 letter to Senator Kennedy when your department knew at that time that it was unsound and presented a substantial risk of a future bailout?
4. Were any concerns about the CLASS program’s sustainability communicated to you by HHS staff between May 19, 2009 and March 23, 2010? If so, please explain what actions you took upon hearing the sustainability concerns. If you weren’t told about CLASS’ problems before PPACA passed, what actions have you taken to remedy this significant communication failure at HHS?
5. On October 22, 2009, William Marton, an employee in the HHS Office of the Assistant Secretary for Planning and Evaluation, wrote that CLASS “[s]eems like a recipe for disaster.”¹¹ Despite this, Richard Frank, the Assistant Secretary for Planning and Evaluation, told a public gathering at the Kaiser Foundation on October 20, 2009 that “we’re entirely persuaded that reasonable premiums, solid participation rates, and

⁹ Secretary Kathleen Sebelius response to question from Senator Thune, Hearing for “The President’s Fiscal Year 2012 Budget Proposal,” United States Senate Committee on Finance, February 15, 2011.

¹⁰ Secretary Kathleen Sebelius response to question from Congressman Boustany, Hearing for “The President’s Fiscal Year 2012 Budget Proposal,” United States House Committee on Ways and Means, February 16, 2011.

¹¹ Email from William Marton (HHS/ASPE) to Marc Cohen, “RE: Data on LTC premiums from 2005,” available at <http://energycommerce.house.gov/media/file/PDFs/CLASS/ExhibitM.pdf>

financial solvency over the 75-year period can be maintained.”¹² Please address the discrepancies between the comments of Mr. Marton and Mr. Frank. Do you think it was appropriate for Mr. Frank to make a public statement about being “entirely persuaded” about CLASS’ sustainability when people in his department were still highly skeptical? Did Mr. Frank knowingly mislead the public?

6. Please provide all documents and communications from May 16, 2009, to the present, relating to conversations anyone at HHS or CMS had with anyone in the White House, including the White House Office of Health Reform, the White House Counsel’s Office, and/or the Office of Management and Budget, about resolving the design problems with the CLASS program within your purported authority. Please summarize when these conversations occurred, who participated, and what was said. Please provide copies of any email communications.
7. Please provide all documents and communications that reference internal HHS concerns about the solvency and lack of authority regarding CLASS, as noted in the January 2010 technical corrections document.¹³

We ask that you provide the requested documents and responses to the above questions by October 25, 2011. Please deliver the requested documents and information to the Majority Staff of the Oversight and Government Reform Committee in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. Please also provide the requested documents and information to the Majority Staff of the Energy and Commerce Committee in Room 2125 of the Rayburn House Office Building and the Minority Staff in Room 2322A of the Rayburn House Office Building.

If you have any questions about this request, please contact Brian Blase or Sery Kim of the Oversight and Government Reform Committee staff at 202-225-5074 or Stacy Cline of the Energy and Commerce Committee staff at 202-225-2927. Thank you for your attention to this matter.

¹² Comments made on October 20, 2009 at Kaiser Family Foundation Event. —The Sleeper Issue: Long-term Care and the CLASS Act. Page 49-50

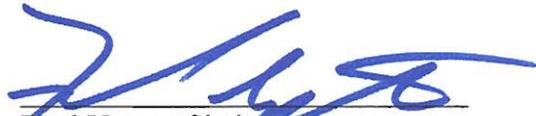
http://www.kff.org/healthreform/upload/102009_KFF_CLASS_Act_Transcript_Final.pdf.

¹³ CLASS: Suggested Technical Corrections, Last Updated 01/04/10 available at <http://energycommerce.house.gov/media/file/PDFs/CLASS/ExhibitQ.pdf>.

Sincerely,



Darrell Issa, Chairman
Committee on Oversight and
Government Reform
United States House of Representatives



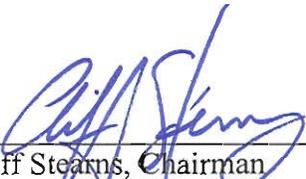
Fred Upton, Chairman
Committee on Energy and Commerce
United States House of Representatives



Trey Gowdy, Chairman
Health Care, District Of Columbia,
Census and the National Archives
Subcommittee
Committee on Oversight and
Government Reform
United States House of Representatives



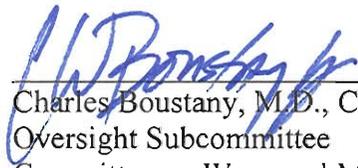
Joe Pitts, Chairman
Health Subcommittee
Committee on Energy and Commerce
United States House of Representatives



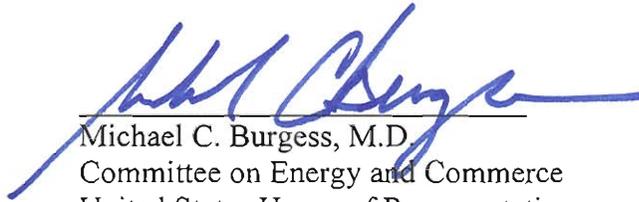
Cliff Stearns, Chairman
Oversight and Investigations Subcommittee
Committee on Energy and Commerce
United States House of Representatives



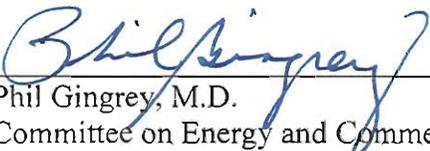
Denny Rehberg, Chairman
Labor, Health and Human Services, and
Education Subcommittee
Committee on Appropriations
United States House of Representatives



Charles Boustany, M.D., Chairman
Oversight Subcommittee
Committee on Ways and Means
United States House of Representatives



Michael C. Burgess, M.D.
Committee on Energy and Commerce
United States House of Representatives



Phil Gingrey, M.D.
Committee on Energy and Commerce
United States House of Representatives



John Thune, Chairman
Republican Policy Committee
United States Senate



Jeff Sessions, Ranking Member
Committee on the Budget
United States Senate



Lindsey Graham
Committee on Appropriations
United States Senate



Tom Coburn, Ranking Member
Permanent Subcommittee on Investigations
United States Senate

cc: The Honorable Elijah Cummings, Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Danny Davis, Ranking Member
Subcommittee on Health Care, District of Columbia, Census and the
National Archives
United States House of Representatives

The Honorable Henry Waxman, Ranking Member
Energy and Commerce Committee
United States House of Representatives

The Honorable Frank Pallone, Jr., Ranking Member
Health Subcommittee, Energy and Commerce Committee
United States House of Representatives

The Honorable Diane DeGette, Ranking Member
Oversight and Investigations Subcommittee, Energy and Commerce Committee
United States House of Representatives