

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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April 18, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

The Honorable Russell Vought
Acting Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Dear Director Mulvaney and Acting Administrator Vought:

On February 14, 2019, I wrote to Director Mulvaney and Neomi Rao, who then served as the Administrator of the Office of Information and Regulatory Affairs (OIRA), requesting information about the regulatory review process for the Title X gag rule, which proposed to prohibit providers from referring patients for the full range of reproductive health care services.

The letter, which was also signed by Senate Committee on Health, Education, Labor, and Pensions Committee Ranking Member Patty Murray, Senator Margaret Hassan, and Senator Kamala Harris, raised numerous concerns regarding the public health and economic implications of the rule, as well as the troubling irregularities of the rule's review process.¹

My colleagues and I received no official response to our request for six weeks. Instead, the Department of Health and Human Services finalized the gag rule, implemented the proposed rule's changes, and threatened access to family planning services for millions of low-income women across the United States.²

¹ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, Ranking Member Patty Murray, Senate Committee on Health, Education, Labor, and Pensions, Senator Margaret Wood Hassan, and Senator Kamala D. Harris, to Director Mick Mulvaney, Office of Management and Budget, and Administrator Neomi Rao, Office of Information and Regulatory Affairs (Feb. 14, 2019) (online at <https://oversight.house.gov/news/press-releases/democrats-object-to-unconventional-and-nontransparent-review-process-for-rule-to>).

² Department of Health and Human Services, *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7714 (Mar. 4, 2019) (final rule) (online at www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-03461.pdf); Kaiser Family Foundation, *Proposed Changes to Title X: Implications for Women and Family Planning*

On April 3, 2019, the Office of Management and Budget (OMB) finally responded to our request, but declined to provide any of the requested documents.³ To justify its refusal, OMB cited an earlier letter sent during the Obama Administration on May 3, 2016, to the Republican Chairmen of the Committee on Ways and Means and the Committee on Energy and Commerce. That letter was sent by Tamara Fucile, who then served as OMB Associate Director of Legislative Affairs, asserting that documents regarding cost-sharing payments under the Affordable Care Act reflected internal Executive Branch deliberations that should not be disclosed to Congress.⁴

However, OMB's recent letter on April 3, 2019, failed to mention that, after Ms. Fucile raised these initial concerns, those Committees issued subpoenas to OMB, and OMB ultimately produced the documents.⁵ In addition, a former OMB official participated in a transcribed interview as part of that investigation.⁶

In addition, OMB's letter on April 3, 2019, failed to mention that OMB also produced documents to the Oversight Committee during the Obama Administration in response to the investigation initiated by then-Chairman Jason Chaffetz into the Waters of the United States (WOTUS) rulemaking. Documents concerning the WOTUS rulemaking, including communications between officials at OMB and other agencies, were produced prior to the Committee issuing a subpoena on July 14, 2015.⁷ Ultimately, supplementary documents, including internal analyses of the rulemaking and additional communications between Administration officials, were produced to the Committee.⁸ In addition, Ms. Fucile testified before the Committee at a hearing to examine OMB's compliance with the Committee

Providers (Nov. 2018) (online at <http://files.kff.org/attachment/Issue-Brief-Proposed-Changes-to-Title-X-Implications-for-Women-and-Family-Planning-Providers>).

³ Letter from Jason A. Yaworske, Associate Director for Legislative Affairs, Office of Management and Budget, to Chairman Elijah E. Cummings, Committee on Oversight and Reform (Apr. 3, 2019).

⁴ Letter from Tamara Fucile, Associate Director of Legislative Affairs, Office of Management and Budget, to Chairman Kevin Brady, Committee on Ways and Means, and Chairman Fred Upton, Committee on Energy and Commerce (May 3, 2016) (online at archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/letters/20160503OMB_Response_CSR.PDF).

⁵ Committee on Energy and Commerce, *Investigation on Obamacare's Cost-Sharing Reduction Program Launched in February 2015—Subpoenas to HHS and OMB Follow Subpoenas to Treasury Dept.* (May 4, 2016).

⁶ Republican Staff, Committee on Energy and Commerce and Committee on Ways and Means, *Joint Congressional Investigative Report into the Source of Funding for the ACA's Cost Sharing Reduction Program* (July 2016) (online at archives-energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/114/analysis/20160707Joint_Congressional_Investigative_Report.pdf).

⁷ Letter from Administrator Howard Shelanski, Office of Information and Regulatory Affairs, to Chairman Jason Chaffetz, Committee on Oversight and Government Reform (June 4, 2015).

⁸ Republican Staff, Committee on Oversight and Government Reform, *Politicization of the Waters of the United States Rulemaking* (Oct. 27, 2016) (online at republicans-oversight.house.gov/wp-content/uploads/2016/10/WOTUS-OGR-Report-final-for-release-1814-Logo-1.pdf).

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investigation.⁹ OMB officials, including then-OIRA Administrator Howard Shelanski, also participated in transcribed interviews concerning the WOTUS rulemaking.

OMB's sweeping claim in its recent letter that it cannot provide a single document to the Committee is unsupported by precedent, and ongoing litigation surrounding the Title X gag rule does not provide a legitimate legal basis to withhold information from Congress.

For these reasons, I ask that you produce the requested documents by May 2, 2019. If you will not provide them voluntarily, the Committee will be forced to consider alternative means to obtain them.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of "the operation of Government activities at all levels, including the Executive Office of the President."

If you have any questions, please contact Committee staff at (202) 225-5051. Thank you for your prompt attention to this matter.

Sincerely,



Elijah E. Cummings
Chairman

cc: The Honorable Jim Jordan, Ranking Member

⁹ Committee on Oversight and Government Reform, *Hearing on Document Production Status Update*, 114th Cong. (Jan. 7, 2016).