



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 23, 2019

The Honorable Elijah E. Cummings
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Office of Management and Budget (OMB) and its Office of Information and Regulatory Affairs (OIRA) received your April 18, 2019 letter regarding the Title X family planning grant program. The U.S. Department of Health and Human Services (HHS) issued a final rule to revise the regulations governing the Title X family planning program to ensure compliance with the statutory intent of the program.¹

As I stated in my April 3, 2019 letter, OMB conducted a review of this rulemaking consistent with Executive Order 12866 at both the proposed and final rule stages.² These regulations have been revised several times as various administrations have administered the Title X program. Most relevant here, on February 2, 1988, HHS promulgated Title X regulations giving specific program guidance on the use of Title X funds in programs where abortion is a method of family planning.³ These regulations were tested in the courts and the U.S. Supreme Court upheld these regulations on both statutory and constitutional grounds in *Rust v. Sullivan*.⁴ The regulations remained in place for more than a decade until July 3, 2000.⁵ As HHS noted in the final rule, its 2019 rule closely follows the 1988 final rule.⁶ Thus, OIRA and HHS have every confidence that the rule is lawful, familiar to program participants, and administratively feasible.

¹ Compliance with Statutory Program Integrity Requirements, 84 FR 7714 (2019).

² Letter from Jason Yaworske, Assoc. Dir. of Legis. Affairs, Off. of Mgmt. and Budget, to Sen. Maggie Hassan, Sen. Patty Murray, Sen. Kamala Harris, and Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Gov't Reform (Apr. 2, 2019).

³ Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Service Projects, 53 FR 2922 (Feb. 2, 1988).

⁴ 500 U.S. 173 (1991). The Court rejected claims that the regulations violated the Administrative Procedure Act, the First Amendment, the Fifth Amendment, or the Title X statute.

⁵ Standards of Compliance for Abortion-Related Services in Family Planning Services Projects, 65 FR 41270 (2000).

⁶ *Supra* note 1.

Regarding your request about OIRA's rulemaking process, it requests documents containing internal deliberations and legal analyses. Past administrations, including the last one, have consistently sought to protect the confidentiality of these deliberations to prevent a chilling effect on future deliberations.

In your April 18 letter, you cite to instances in which the Obama Administration produced documents containing internal deliberations and legal analyses. Those instances need additional context. In the first example, you state that "OMB ultimately produced the documents," which two congressional committees subpoenaed.⁷ Your letter does not provide a citation for this assertion. Instead, the congressional report cited in your letter states, "[a]s of the drafting of this report, neither the Department of Treasury, nor the Department of Health and Human Services nor the Office of Management and Budget were in compliance with subpoenas issued by the committees."⁸ According to an addendum to the congressional report, the Obama Administration only permitted the committees to review a subset of the subpoenaed documents *in camera* months later.⁹ It is my understanding that OMB did not produce most of the subpoenaed documents.

In the other example involving the Waters of the United States rulemaking, your letter does not acknowledge the lengthy negotiations between OMB and the committee, including after the committee issued a subpoena for documents. Additionally, it is my understanding that OMB provided some, but not all, the subpoenaed documents. What these examples demonstrate is that the Executive Branch works with Congress, on a case-by-case basis, to reach mutually acceptable solutions that respect Congress' oversight interests and the Executive Branch's interests in protecting internal deliberations.

In keeping with past practice, OMB would like to find a way to accommodate your oversight interests while protecting the Executive Branch's longstanding interests in maintaining confidentiality in the deliberative process. The information requested in category (1) of your request is contained in the final rule itself. To help clarify OIRA's rulemaking process in connection with this rule, OMB is willing to provide your staff a briefing. Please contact me so that we can schedule a briefing.

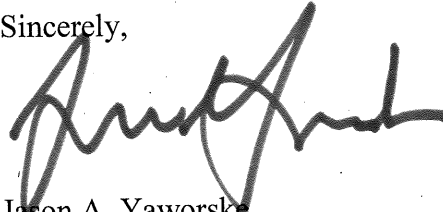
⁷ Letter from Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Gov't Reform to Hon. Mick Mulvaney, Dir., Office of Mgmt. and Budget, and Hon. Russell Vought, Acting Admin. [sic], Office of Info. and Reg. Affairs (Apr. 18, 2019).

⁸ H. COMM. ON ENERGY & COMMERCE AND H. COMM. ON WAYS & MEANS, MAJORITY STAFF, JOINT CONGRESSIONAL INVESTIGATIVE REPORT INTO THE SOURCE OF FUNDING FOR THE ACA'S COST SHARING REDUCTION PROGRAM 100 (July 2016).

⁹ H. COMM. ON ENERGY & COMMERCE AND H. COMM. ON WAYS & MEANS, MAJORITY STAFF, ADDENDUM TO JOINT CONGRESSIONAL INVESTIGATIVE REPORT INTO THE SOURCE OF FUNDING FOR THE ACA'S COST SHARING REDUCTION PROGRAM 9 (Dec. 2016).

Thank you again for interest on this rulemaking. If you or your staff have any further questions, please contact the OMB Office of Legislative Affairs at LegislativeAffairs@omb.eop.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason A. Yaworske', written in a cursive style.

Jason A. Yaworske
Associate Director for Legislative Affairs

cc: The Honorable Jim Jordan