

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<http://oversight.house.gov>

February 26, 2020

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

The Honorable Paul Ray
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 Administrator Ray:

I am writing to you regarding the Committee on Oversight and Reform's ongoing investigation of the regulatory review conducted by the Office for Information and Regulatory Affairs (OIRA) for the Title X gag rule, which prohibits providers from referring patients for the full range of reproductive health care services.

On February 14, 2019, the Committee wrote to Director Mulvaney and then-OIRA Administrator Neomi Rao seeking documents relating to OIRA's review process for the Title X gag rule. This letter—signed by then-Chairman Elijah E. Cummings and Senators Patty Murray, Margaret Hassan, and Kamala Harris—raised concerns about OIRA's approval of the decision by the Department of Health and Human Services (HHS) not to deem the Title X rule “economically significant,” despite the clear public health and economic implications of the rule, as well as apparent irregularities in the rule's regulatory review process.¹

The Office of Management and Budget (OMB) first responded on April 3, 2019, declining to provide any of the requested documents.² On April 18, 2019, the Committee wrote

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 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) (online at

again to Director Mulvaney, reiterating the request for responsive documents by May 2, 2019.³ The Office of Management and Budget (OMB) responded on May 23, 2019—three weeks after the extended deadline—but categorically refused to provide any documents.⁴

OMB's May 23 letter expressed a willingness to "accommodate your oversight interests while protecting the Executive Branch's longstanding interests in maintaining confidentiality in the deliberative process."⁵ OMB offered a staff briefing on the Title X rule on June 21, 2019. Although OMB officials provided information about the general rulemaking process, they declined to provide specific information about the Title X rule and failed to address any of the concerns described in the February 14 letter. Immediately following the briefing, Committee staff reiterated the requests for documents, including those relating to the evaluation of the rule's economic significance, as well as the interagency review process.

Since then, The Department of Health and Human Services (HHS) has finalized the Title X gag rule and has started enforcing provisions of the rule that restrict providers' ability to inform patients of the full range of reproductive health services available to them. The harmful effects of these restrictions have already begun to materialize. At least half a dozen states and more than a thousand Title X clinics have been forced to stop using Title X funds or to withdraw from the program altogether, threatening access to reproductive health care for as many as 1.6 million women nationwide.⁶

On March 4, 2020, HHS will begin enforcing the rule's requirement that clinics create physical separation between abortion care and other health care services, imposing additional costs on providers and further threatening the Title X network.⁷

<https://oversight.house.gov/sites/democrats.oversight.house.gov/files/OMB%20to%20COR%2004-03-19.pdf>).

³ Letter from Chairman Elijah E. Cummings, Committee on Oversight and Reform, to Director Mick Mulvaney, Office of Management and Budget, and Acting Administrator Russell T. Vought, Office of Information and Regulatory Affairs (Apr. 18, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-04-18.EEC%20to%20Mulvaney-OMB%20Vought-OIRA%20re%20Title%20X.pdf>).

⁴ 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 (May 23, 2019) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019.05.23%20Yaworske%2C%20Jason%20to%20Chairman%20Cummings%2C%20Elijah.pdf>).

⁵ *Id.*

⁶ *6 States Are Now Rejecting Federal Money Because of Trump's Abortion 'Gag Rule,'* Vice News (Aug. 30, 2019) (online at www.vice.com/en_us/article/ne8n8b/6-states-are-now-rejecting-federal-money-because-of-trumps-abortion-gag-rule); *The Status of Participation in the Title X Federal Family Planning Program*, Kaiser Family Foundation (Dec. 20, 2019) (online at www.kff.org/interactive/the-status-of-participation-in-the-title-x-federal-family-planning-program/) (accessed Feb. 25, 2020); *Trump Administration's Domestic Gag Rule Has Slashed the Title X Network's Capacity by Half*, Guttmacher Institute (Feb. 5, 2020) (online at www.guttmacher.org/article/2020/02/trump-administrations-domestic-gag-rule-has-slashed-title-x-networks-capacity-half).

⁷ Department of Health and Human Services, *Compliance with Statutory Program Integrity Requirements*, 84 Fed. Reg. 7791 (Mar. 4, 2019) (final rule) (online at www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-

The Honorable Mick Mulvaney
The Honorable Paul Ray
Page 3

When I became Chairwoman of the Committee, I asked Committee staff to seek an update from OMB on its plans to respond to the Committee's requests. On December 13, 2019, my staff wrote to request this update from OMB staff. To date, OMB has neither acknowledged nor responded to this request.

For these reasons, I am now formally reiterating the Committee's requests for documents and information related to this matter. OMB's ongoing obstruction of this investigation reflects a failure of respect for Congress' legitimate oversight responsibilities. If OMB fails to provide a complete response to the Committee's February 14, 2019, letter by March 4, 2020, the Committee will be forced to consider alternative means to obtain compliance.

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,


Carolyn B. Maloney
Chairwoman

cc: The Honorable Jim Jordan, Ranking Member