



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

April 3, 2019

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

Dear Mr. Chairman:

Thank you for your letter to the Office of Management and Budget (OMB) and the Office of Information and Regulatory Affairs (OIRA) regarding the Title X family planning grant program. This voluntary program provides individuals with comprehensive family planning and related health services.

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.<sup>1</sup> These regulations had not been substantially updated since 2000. The new final rule ensures compliance with the statutory intent of the program. As you are aware, since enactment, Title X of the Public Health Service Act has contained the following prohibition at section 1008: “None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.”<sup>2</sup> HHS’s final rule ensures funds appropriated for Title X are not granted to programs where abortion is a method of family planning.<sup>3</sup> This final rule also takes measures to protect the patient/healthcare provider relationship,<sup>4</sup> protect women and children from victimization,<sup>5</sup> expands coverage, partnerships, and innovation,<sup>6</sup> and returns Title X flexibility to states and other grantees.<sup>7</sup>

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<sup>1</sup> Compliance with Statutory Program Integrity Requirements, 84 FR 7714 (2019).

<sup>2</sup> Public Health Service Act §1008, 42 U.S.C. §300a-6.

<sup>3</sup> To ensure program integrity and consistency with statutory purpose, this final rule prohibits the use of Title X funds to perform, promote, refer for, or support abortion as a method of family planning; provides for clear financial and physical separation between Title X and non-Title X activities; and improves program transparency by requiring more complete reporting by grantees about sub-recipients and more clarity about informal partnerships with referral agencies.

<sup>4</sup> For example, this final rule ensures conscience protections for Title X health providers by permitting, but no longer requiring, nondirective pregnancy counseling, including on abortion; and requires referrals for those conditions deemed medically necessary.

<sup>5</sup> For example, this final rule ensures compliance with state reporting laws and consistency of care for women and children who visit Title X clinics and are victims of sexual abuse, intimate partner violence, incest, or human trafficking and requires that minors be counseled on how to resist coercion to engage in sexual activity.

<sup>6</sup> For example, this final rule focuses on innovative approaches to expand Title X services to unserved and underserved areas; prioritizes innovation, partnerships and expansion of the number served by changes in selection criteria for grant proposals; and clarifies that those unable to obtain employer-sponsored insurance coverage for certain contraceptive services due to their employer’s religious beliefs or moral conviction may be considered for Title X services.

<sup>7</sup> For example, this final rule restores the States’ ability to prioritize funding according to the needs of the populations.

In your letter, you allege the regulatory review process for this rule was “unconventional and nontransparent.”<sup>8</sup> OIRA conducted a normal review of this rulemaking under Executive Order 12866 at both the proposed and final rule stages. OIRA received the final rule for review on February 7, 2019, and concluded review on February 21, 2019—a total review period of 15 days. For comparison, during the last administration, approximately 24 percent of all HHS rules were reviewed in 10 days or less. These included many new regulations to implement the Affordable Care Act.

It should also be noted that this final rule is substantially similar to an earlier final rule issued during the Reagan Administration that previously withstood Supreme Court scrutiny. 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.<sup>9</sup> The 1988 regulations similarly prohibited referring clients for abortion as method of family planning, required grantees to separate their Title X activities from abortion-related activities, and established compliance standards for Title X grantees to specifically prohibit certain actions that promote, encourage, or advocate abortion as a method of family planning.<sup>10</sup> These regulations were tested in the courts. Ultimately, the U.S. Supreme Court upheld these regulations on both statutory and constitutional grounds in *Rust v. Sullivan*.<sup>11</sup>

Regarding the documents you have requested, they contain internal deliberations and legal analysis. Past administrations, including the last one, have consistently sought to protect these types of internal deliberations. As Tamara Fucile, the Associate Director of Legislative Affairs for OMB in the Obama Administration wrote in declining to provide documents in response to a similar request for internal documents, “[t]he Executive Branch has significant confidentiality interests in such pre-decisional deliberations and analysis. In light of the chilling effect on future deliberations in the rulemaking process that would follow their disclosure, the Executive Branch endeavors to maintain the confidentiality of its internal deliberations.”<sup>12</sup> These confidentiality interests are further heightened in this matter in light of the pending litigation.<sup>13</sup> Thank you for understanding the Executive Branch’s “strong institutional interest in protecting the confidentiality of internal deliberations and legal analysis.”<sup>14</sup>

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<sup>8</sup> Letter from Rep. Elijah J. Cummings, Chairman, H. Comm. on Oversight and Gov’t Reform, et al., to Hon. Mick Mulvaney, Director, Off. of Mgmt. and Budget, and Hon. Neomi Rao, Admin., Off. of Info. and Reg. Aff. (Feb. 14, 2019).

<sup>9</sup> 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).

<sup>10</sup> *Id.*

<sup>11</sup> 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.

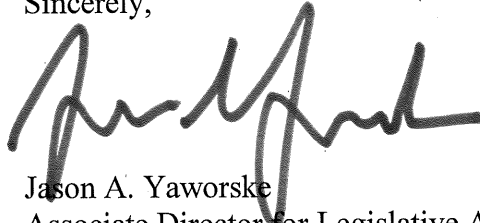
<sup>12</sup> Letter from Tamara L. Fucile, Assoc. Dir. of Legis. Affairs, Off. of Mgmt. and Budget, to Rep. Kevin Brady, Chairman, H. Comm. on Ways and Means, and Rep. Fred Upton, Chairman, H. Comm. on Energy and Commerce (May 3, 2016).

<sup>13</sup> *California v. Azar*, No. 01184 (No. D. Calif. filed Mar. 4, 2019); *Oregon v. Azar*, No. 00317 (D. Oregon filed March 5, 2019).

<sup>14</sup> *Supra* note 12.

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](mailto:LegislativeAffairs@omb.eop.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason A. Yaworske', written over the printed name and title.

Jason A. Yaworske  
Associate Director for Legislative Affairs

cc: The Honorable Lamar Alexander  
The Honorable Jim Jordan  
The Honorable Alex M. Azar II

Identical Letter Sent to: The Honorable Patty Murray, The Honorable Margaret Wood Hassan  
and The Honorable Kamala D. Harris