



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

May 3, 2016

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Brady and Chairman Upton:

This responds to your letter to the Director of the Office of Management and Budget (OMB) requesting a copy of a legal memorandum regarding the funding of the Affordable Care Act's (ACA) cost-sharing reduction program.

The memorandum you have requested was prepared by OMB's Office of General Counsel and contains internal deliberations and legal analysis associated with the funding sources for the cost-sharing reduction program. The Executive Branch has significant confidentiality interests in such pre-decisional deliberations and analysis. In light of the chilling effect on future deliberations that would follow their disclosure, the Executive Branch endeavors to maintain the confidentiality of its internal deliberations.

The reasons for maintaining the confidentiality of Executive Branch deliberations have special force when legal advice is involved. Legal matters are among those as to which government officials have the greatest need for expert advice that is candid and objective. The availability of such frank advice serves public ends by aiding government officials in the lawful administration of their duties. For these reasons, it is critical that government officials be able to seek, and give, candid legal advice and opinions without fear that their advice and deliberations will ultimately be disclosed. As we have previously informed you, these confidentiality interests are heightened in this matter in light of the pending litigation brought by the House of Representatives.

We appreciate your understanding that the Executive Branch has a strong institutional interest in protecting the confidentiality of internal deliberations and legal analysis. In that spirit of cooperation, OMB is committed to continuing to work with the committee to accommodate its interest in the implementation of the ACA's cost-sharing program. Accordingly, OMB will provide you under separate cover a summary of the government's legal analysis supporting the funding of the ACA's cost-sharing reduction program.

We look forward to continuing to work with you in your oversight of this matter. Please do not hesitate to contact my office at 202-395-4790 to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara L. Fucile". The signature is fluid and cursive, with a prominent initial "T" and a long, sweeping underline.

Tamara L. Fucile
Associate Director of Legislative Affairs

cc: The Honorable Sander Levin
The Honorable Frank Pallone