



September 8, 2014

Department of Health and Human Services FOIA Office  
Freedom of Information Officer  
Mary E. Switzer Building, Room 2221  
330 C Street, S.W., Washington, D.C. 20201  
By Fax and By Email  
Fax: 202-690-8320  
Email: Michael.Marquis@hhs.gov

**Re: Freedom of Information Act Request**

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, *et seq.*), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) organization, to request the following documents.

1. All emails to or from any of the following individuals since March 1, 2010:
  - a. Jonathan Gruber;
  - b. Timothy Jost; or
  - c. Simon Lazarus
2. All communications between March 1, 2010 and August 28, 2012, regarding:
  - a. The availability of premium tax credits or cost-sharing reductions to consumers on a federally-facilitated insurance exchange<sup>1</sup>; or whether tax credits would be available to consumers on a federally-facilitated insurance exchange.
  - b. Any functions or technology intended to help or enable consumers, who sign up for insurance using a federally-facilitated insurance, to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits:

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<sup>1</sup> When we refer to a federally-facilitated exchange, we mean exchanges facilitated by the federal government in conjunction with the Affordable Care Act or PPACA, which is also referred to colloquially as Obamacare. We do not mean to include exchanges established and operated by a state government, as opposed to the federal government.

- c. Eligibility determinations for premium tax credits and cost sharing reductions on a federally-facilitated insurance exchange;
- d. Any calculator to be used for calculating premium tax credits or cost-sharing reductions on or for a federally-facilitated exchange;
- e. Any electronic calculator for such an exchange that allows individuals to view a preliminary actual cost of their coverage once premium tax credits have been applied to their premiums, as well as the impact of cost-sharing reductions, if they are eligible.
- f. Any functions for displaying Premium Tax credits or lower cost sharing information for those beneficiaries qualifying for additional help on a federally-facilitated exchange; and
- g. Any “calculation module” to account for a Premium Tax credit of an individual, Family, or Small Business/Group on a federally-facilitated exchange.

Item #2 above seeks communications regardless whether they are within the Department of Health and Human Services (HHS), or with outside entities or persons (such as the Treasury Department, the Internal Revenue Service, the White House, CGI, Inc., or CGI Federal, Inc.)

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies.

We request that your office waive charges pursuant to 5 U.S.C. § 552(a)(4)(iii) & 45 C.F.R. § 5.45(b), since, as is explained below, disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requestor.

Even if you do not waive the charges pursuant to those provisions, we request in the alternative that your office waive charges for the first 100 pages and first two hours of search time.<sup>4</sup>

We request this on the basis that CEI is a nonprofit, tax-exempt, public-interest organization with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public’s understanding of government operations, the shaping of public policy, and how taxpayer money is spent. This FOIA request is not for commercial use.<sup>6</sup>

In the past, FOIA requests made by CEI have generated data and other useful information that was of interest to the public, information featured in news articles and commentary.<sup>7</sup> CEI has

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<sup>4</sup> See, e.g., 45 C.F.R. § 5.41(c).

<sup>6</sup> Nor would it primarily advance any commercial interest. CEI is not a trade association.

<sup>7</sup> See, e.g., Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA’s Chief’s Case Opens Legal Battle*, Washington Times, April 30, 2011, at A1 (news coverage based on documents obtained by CEI’s “Christopher Horner”); Stephen Dinan, *EPA Staff to Retrain on Open Records; Memo Suggests Breach of Policy*,

published about issues related to this contract's subject matter, such as Healthcare.gov and the availability of tax credits through the federal exchange under the Affordable Care Act.<sup>9</sup>

If our fee waiver is denied, we are willing to pay up to \$100.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought).

Our interest in the documents springs from our ongoing efforts to educate the public, scholars, and state and federal regulators on matters of government operations<sup>11</sup> and regulation.<sup>12</sup>

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Washington Times, April 9, 2013, at A4 (EPA stepped up records-management training based on "admission" that some staff had "fallen short" on complying with EPA rules, a practice uncovered by CEI); Stephen Dinan, *Suit Says EPA Balks at Release of Records; Seeks Evidence of Hidden Messages*, Washington Times, April 2, 2013, at A1 (discussing how CEI's Horner had "uncovered that" regional official was "using private email addresses to conduct official business" in violation of EPA guidance).

Data and other useful information obtained by CEI employees through FOIA requests ends up in editorials, news coverage, and Congressional testimony. *See, e.g.*, Trey Kovacs & Alex Habighorst, *Time for an Official End to Federal Employee Union Subsidies*, Washington Examiner, June 5, 2013, <http://washingtonexaminer.com/op-ed-time-for-an-official-end-to-federal-employee-union-subsidies/article/2531217> (Op-ed by CEI staff citing documents obtained by CEI employee Kovacs in his FOIA requests); *Written Statement of Hans Bader, Senior Attorney, Competitive Enterprise Institute, U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs, Hearing Entitled Lasting Implications of the General Motors Bailout*, June 22, 2011, <http://www.scribd.com/doc/58462911/Hans-Bader-Statement-for-Regulatory-Affairs-Subcommittee> (Testimony to Congress quoting information found in documents obtained by CEI FOIA request).

<sup>9</sup> *See, e.g.*, Bader, *Tip of the Healthcare.Gov Iceberg*, CNS News, Oct. 28, 2013 (<http://cnsnews.com/commentary/hans-bader/tip-healthcaregov-iceberg>); Bader, *Court ruling imminent in challenge to invalid Obamacare tax credit payments*, The Examiner, July 10, 2014 (available at <http://www.examiner.com/article/court-ruling-imminent-challenge-to-invalid-obamacare-tax-credit-payments>); Bader, *Obamacare Could Make You Think Twice About Saying I do*, Daily Caller, March 23, 2010 (available at <http://dailycaller.com/2010/03/23/obamacare-could-make-you-think-twice-about-saying-i-do/>).

<sup>11</sup> CEI is widely quoted in the press and other publications. *See, e.g.*, George Will, *Obama's Speech Police*, Washington Post, May 26, 2013, at A17 (quoting CEI's Hans Bader); Cathy Young, *Yet Another Governmental Overreach*, Newsday, May 28, 2013 (same); Ramesh Ponnuru, *Colleges: New Sexual Harassment Rules Defy Reason*, St. Paul Pioneer-Press, July 24, 2013, at A14 (same); *Yet Another Federal Attack on Civil Liberties*, Cincinnati Enquirer, May 26, 2013, at F5 (same); JulieAnn McKellogg, *US Supreme Court Hears Massive Wal Mart Discrimination Case*, Voice of America, Mar. 29, 2011 (same); Al Neuharth, *Why Bail Out Bosses Who Messed It Up*, USA Today, Nov. 21, 2008, at 23A (quoting CEI); Bill Shea, *Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan*, Crain's Detroit Business, May 17, 2010, at 3 (same); William P. Hoar, *Bailing Out Scam Artists*, New American, October 13, 2008, at pg. 42 (quoting CEI's Bader); Mark Tapscott, *GM Named in Deceptive Advertising Complaint Filed With FTC*, Washington Examiner, May 4, 2010 (same); Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (same); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same).

The general and policy-oriented public will benefit from the dissemination of the information requested, since our professionals are widely-published about these subjects.<sup>13</sup> CEI publishes about these and other issues in print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties, and thus qualifies as a press entity<sup>14</sup> for purposes of FOIA. Those activities are in fulfillment of our groups' missions.

The information received will be publicly disseminated through one or more of the following: (a) newsletters, (b) opinion pieces in newspapers or magazines, (c) CEI's web sites and blogs which receive approximately 80,000 monthly visitors (approximately 40,000 unique) and are published

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<sup>12</sup> See, e.g., CEI's blog *Globalwarming.Org*; Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's *GlobalWarming.Org*); Washington Examiner, August 14, 2008, pg. 24, *Think-Tanking* (reprinting relevant commentary from CEI); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing CEI) (available in Westlaw news database at 2007 WLNR 23059349); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI) (available at 2007 WLNR 19666326); See, e.g., Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (2002) (citing CEI's *GlobalWarming.Org*); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same).

<sup>13</sup> See, e.g., John Berlau, *Government "Study" on Internet Tax Hides Harmful Small Business Effects*, Open Market, Nov. 20, 2013, available at [www.openmarket.org/2013/11/20/government-study-on-internet-tax-hides-harmful-small-business-effects/](http://www.openmarket.org/2013/11/20/government-study-on-internet-tax-hides-harmful-small-business-effects/). Similarly, the author of this letter routinely writes about government operations and agency positions. See, e.g., Bader, *Tip of the Healthcare.Gov Iceberg*, CNS News, Oct. 28, 2013 (<http://cnsnews.com/commentary/hans-bader/tip-healthcaregov-iceberg>); *Obama White House Closing Private Businesses to Add Pain to Government Shutdown*, Washington Examiner, Oct. 5, 2013 (<http://washingtonexaminer.com/obama-white-house-closing-private-businesses-to-add-pain-to-government-shutdown/article/2536820>); *The IRS Is Finally Doing the Job It Was Supposed to Do*, letters, Wall Street Journal, Dec. 15, 2013 (<http://online.wsj.com/news/articles/SB10001424052702304014504579250393172288678>); *How Australia's Minimum Wage Differs from America's* (letter), Washington Post, Dec. 10, 2013 ([http://www.washingtonpost.com/opinions/how-australias-minimum-wage-differs-from-americas/2013/12/09/adbc34-6017-11e3-a7b4-4a75ebc432ab\\_story.html](http://www.washingtonpost.com/opinions/how-australias-minimum-wage-differs-from-americas/2013/12/09/adbc34-6017-11e3-a7b4-4a75ebc432ab_story.html)); *Getting the History of the Voting Rights Act Right*, Washington Post, May 1, 2013, ([www.washingtonpost.com/opinions/getting-the-history-of-the-voting-rights-act-right/2013/05/01/1d18328c-b04f-11e2-9fb1-62de9581c946\\_story.html](http://www.washingtonpost.com/opinions/getting-the-history-of-the-voting-rights-act-right/2013/05/01/1d18328c-b04f-11e2-9fb1-62de9581c946_story.html)); *When the First Amendment Is Repealed by Bureaucrats*, Wall Street Journal, May 24, 2013, at A12 (<http://online.wsj.com/article/SB10001424127887324787004578497454237999618.html>); *Fannie Mae, Freddie Mac, and the Financial Crisis*, New York Times, Jan. 3, 2012 (<http://www.nytimes.com/2012/01/04/opinion/fannie-mae-freddie-mac-and-the-financial-crisis.html>); Letter, *Frum Wrong About Budget Cuts*, National Post, Feb. 12, 2013; *Free Speech Isn't Harassment*, Washington Times, May 23, 2013 ([www.washingtontimes.com/news/2013/may/23/free-speech-isnt-harassment/](http://www.washingtontimes.com/news/2013/may/23/free-speech-isnt-harassment/)); *EEOC Demands Imperil the Public*, Washington Times, Jan. 12, 2012, at B2; Letter, *Mr. Franken's Arbitration Amendment*, Washington Post, Oct. 29, 2009, at A18; *Day Cares Can't Mandate Diversity*, Washington Times, July 19, 2011, at B2; Letter, *Fair Means Fair; Evidence Must Count for Something*, Wall Street Journal, July 21, 2011, at A16.

<sup>14</sup> See the attachment to this letter, an EPA letter granting CEI a waiver of fees under FOIA. See also 40 C.F.R. 2.107(c)(iii) (providing fee waivers for media requesters); *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (publisher of bi-weekly electronic newsletter qualified as media under FOIA); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173 (10th Cir. 2005) (fee waiver for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver" provisions).

on most days,<sup>15</sup> (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute,<sup>16</sup> (f) radio programs, (g) to the extent that Congress or state regulators or legislators engaged in relevant oversight find that which is received noteworthy, it will become part of the legislative or administrative record. CEI is regularly cited in newspapers,<sup>17</sup> law reviews,<sup>18</sup> and scholarly publications.<sup>19</sup>

As provided by FOIA, I look forward to hearing from you within twenty (20) days.<sup>20</sup> If you deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption on which you are relying, and provide the name and address of the

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<sup>15</sup> See, e.g., [www.openmarket.org](http://www.openmarket.org) (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); [www.globalwarming.org](http://www.globalwarming.org) (another CEI blog); Mona Charen, Creators Syndicate, *You Might Suppose That President Obama Has His Hands . . .*, Bismarck Tribune, June 10, 2009, at A8 (quoting CEI's OpenMarket blog); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI's OpenMarket).

<sup>16</sup> See, e.g., <http://www.examiner.com/scotus-in-washington-dc/hans-bader> (listing of about 1000 commentaries posted several times a week by CEI's Hans Bader at Examiner.com).

<sup>17</sup> See, e.g., Greg Victor, *Subsidizing Madness*, Pittsburgh Post-Gazette, March 27, 2011, at E4 (citing CEI's Bader); Mona Charen, Creators Syndicate, *You Might Suppose That President Obama Has His Hands . . .*, Bismarck Tribune, June 10, 2009, at A8 (quoting CEI's OpenMarket blog); Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); Washington Examiner, August 14, 2008, pg. 24, *Think-Tanking* (quoting CEI's OpenMarket); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing OpenMarket); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI's OpenMarket); *Is Congress Listening? The Peril of Ignoring Public Opinion on the Internet Sales Tax Issue*, Politico, Sept. 11, 2013, [http://images.politico.com/global/2013/09/11/internet\\_sales\\_tax\\_-\\_is\\_congress\\_listening.html](http://images.politico.com/global/2013/09/11/internet_sales_tax_-_is_congress_listening.html) (posting survey commissioned by R Street and National Taxpayers Union on internet sales tax issue); Matt Kibbe, *The Marketplace Fairness Act Is Nothing More Than a 'Convenience Tax'*, The Hill, Apr. 26, 2013 (<http://thehill.com/blogs/congress-blog/technology/296389-the-marketplace-fairness-act-is-nothing-more-than-a-convenience-tax>) (citing research by R Street Institute).

<sup>18</sup> See, e.g., Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (citing Hans Bader of CEI); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same); Robert Hardaway, *The Great American Housing Bubble*, 35 University of Dayton Law Review 33, 34 (2009) (same).

<sup>19</sup> See, e.g., Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, *Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac*, 6 North Carolina Banking Institute 519, 527 (2002) (quoting CEI).

<sup>20</sup> See 5 U.S.C. § 552(a)(6)(A)(i).

person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

Sincerely,

A handwritten signature in black ink that reads "Hans Bader". The letters are cursive and slightly slanted to the right.

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Hans Bader  
Senior Attorney  
Competitive Enterprise Institute  
1899 L Street, NW, 12<sup>th</sup> Floor  
Washington, D.C. 20036  
(202) 331-2278  
hbader@cei.org



Attachment to letter from Hans Bader of CEI



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 10, 2010

OFFICE OF  
ENVIRONMENTAL INFORMATION

Mr. Hans Bader  
Competitive Enterprise Institute  
1899 L Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20036

RE: Request Number HQ-FOI-01223-10

Dear Mr. Bader:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records referred to as the Kerry-Graham-Lieberman climate bill and any attachments or exhibits.

We have reviewed your submission and based on the information you provided, we are granting your fee waiver request. The US Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations, within the Office of the Administrator, will be responding to your information request for the Agency.

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman".

Larry F. Gottesman  
National FOIA Officer

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