CMS FOIA Officer  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Baltimore, MD 21244  
By Fax (410) 786-0474  
By Email: FOIA_Request@cms.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. The purpose of this letter is to request access to and copies of the following documents related to functions or technology that could help or enable consumers, who sign up using the Federal Affordable Care Act Exchange website (or Healthcare.gov website), to determine their individual tax credit eligibility, or to calculate or display prices after taking into account any tax credits:

1. Any documents created or transmitted between March 1, 2010 and August 28, 2012 regarding functions or technology that would enable (or were intended or designed to enable) consumers who sign up using the Federal Affordable Care Act Exchange website\(^1\) or Healthcare.gov website to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits.

2. Any communications with CGI, Inc. or CGI Federal, Inc. between March 1, 2010 and August 28, 2012 regarding functions or technology that would enable (or were intended or designed to enable) consumers who sign up using the Federal Affordable Care Act Exchange website or Healthcare.gov website to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits.

\(^1\) When we refer to the Federal Affordable Care Act Exchange website, that includes, but is not limited to, any federally-facilitated exchange under the Patient Protection and Affordable Care Act, and any federal health insurance marketplace worked on by the Center for Consumer Information & Oversight. When we refer to federally-facilitated exchange, we do not mean to include exchanges established and operated by a state government, as opposed to the federal government.
3. Any communications between March 1, 2010 and August 28, 2012 regarding functions or technology in Contract No. HHSM-500-2007-00015I or Task Order No. HHSM-500-T0012 that would enable (or were intended or designed to enable) consumers who sign up using the Federal Affordable Care Act Exchange website or Healthcare.gov website to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits.


5. Any communications between March 1, 2010 and August 28, 2012 regarding functions or technology in the Federal Exchange Program System that would enable (or were intended or designed to enable) consumers who sign up using the Federal Affordable Care Act Exchange website or Healthcare.gov website to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits.

6. Any communications between March 1, 2010 and August 28, 2012 regarding functions or technology to be potentially included in the Federal Exchange Statement of Work that would enable (or were intended or designed to enable) consumers who sign up using the Federal Affordable Care Act Exchange website or Healthcare.gov website to determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits.


When the above requests seek documents or communications related to “functions or technology that would enable (or were intended or designed to enable) consumers determine their individual tax credit eligibility, or to calculate or to display comparative pricing options after any tax credits,” that category of requested documents or communications includes, but is not limited to:

- Functions for calculating premium tax credits and cost sharing reductions;
- Any Premium Tax Credit and Cost-sharing Reduction Calculator;
- Any electronic calculator 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;
- Any functions for displaying Premium Tax credits or lower cost sharing information for those beneficiaries qualifying for additional help; and
- And any “calculation module” which will complete complex insurance calculations. For example, a calculation module to account for a Premium Tax credit of an individual, Family, or Small Business/Group and provide accurate information on Premium, Deductible, and Out-of-pocket costs.
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.4

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.6

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.7 CEI has 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.9

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4 See, e.g., 45 C.F.R. § 5.41(c).

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

7 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, 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).


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 and regulation.

The general and policy-oriented public will benefit from the dissemination of the information requested, since our professionals are widely-published about these subjects. 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 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 on most days, (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute, (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, law reviews, and scholarly publications.

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14 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.3d 5 (D.D.C. 2001) (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).

15 See, e.g., www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); 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).

16 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).

17 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: Bifuel 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
As provided by FOIA, I look forward to hearing from you within twenty (20) days. 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 person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

Sincerely,

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

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May 10, 2010

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, 12th 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,

Larry F. Gottesman
National FOIA Officer