

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6375

www.science.house.gov

July 12, 2019

The Honorable Walter G. Copan
Undersecretary of Commerce for Standards and Technology
Director, National Institute of Standards and Technology
100 Bureau Drive
Gaithersburg, MD 20899

Dear Undersecretary Copan,

I am writing with questions regarding the National Institute of Standards and Technology's (NIST) strategy for implementing President Trump's June 14, 2019, Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees.¹ The Federal Advisory Committee Act (FACA) allows agencies to seek the advice of experts in order to ensure that federal policies and programs are well-considered. FACA also ensures a level of transparency and integrity in federal decision-making – all FACA committee activities are public, and members must adhere to federal ethics and conflict of interest requirements.² Federal science agencies in particular are dependent on FACA committees to provide objective advice on matters relating to health, the environment, and matters of technological and scientific competitiveness on the global stage.

The Executive Order sets a deadline of September 30, 2019 for each agency to eliminate an arbitrary number of FACA committees under its purview – one third of those that are not authorized by statute or the President. It then sets a limit of 350 total FACA committees across

¹ "Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees," The White House, June 14, 2019, accessed here: <https://www.whitehouse.gov/presidential-actions/executive-order-evaluating-improving-utility-federal-advisory-committees/>

² "The Federal Advisory Committee Act (FACA) Brochure," U.S. General Services Administration, February 26, 2019, accessed here: <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/the-federal-advisory-committee-act-faca-brochure>

the federal government. Agencies seeking to create a new committee beyond this limit would have to request a waiver from the Office of Management and Budget.

I am puzzled by the Order's apparent presumption that one third of the FACA committees established at agencies' discretion have exhausted their usefulness. OMB has made no explanation to Congress or the public in its defense. Furthermore, the subsequent implementation of a waiver requirement will serve as a bureaucratic hurdle an agency must clear in order to receive the expert advice it seeks.

In addition, history shows that this directive is an ineffective way to save federal dollars. In 1993, President Clinton issued Executive Order 12838, which also slashed the number of advisory committees by one third.³ In 1997, the Government Accountability Office (GAO) issued a report reviewing how FACA committees' costs and membership changed as a result of this Executive Order. GAO determined that in the drop from 1,305 to 1,000 committees between 1993 to 1996, membership increased 4 percent and costs increased 3 percent.⁴

While this Order is unlikely to reduce federal spending, it will certainly make the advisory process more opaque to the American public. The FACA process requires public solicitation of applications to advisory committees; public notice of meetings, which are largely open to the public; published meeting minutes and documentation that is subject to the Freedom of Information Act; and adherence to federal ethics rules and conflict of interest disclosures.⁵ As Chairwoman of the Science, Space, and Technology Committee, it is of utmost importance to me that science agencies continue to solicit expert advice in a manner accessible to the public. FACAs are a critical element to ensuring federal agencies operate in the best interest of the American people and an invaluable piece of the American science and technology enterprise. The Committee would like to understand how this Executive Order will be implemented by federal science agencies and how it will impact their ability to solicit independent, transparent advice from experts.

In order to assist the Committee in its oversight, please provide written answers to the following questions:

- A list of FACA committees that are eligible for elimination pursuant to the June 14 Executive Order.
- By what metrics will NIST determine whether a FACA committee should be cut?
- Do you believe one third of current agency-established FACA committees are obsolete, redundant, or excessively expensive, as outlined in the Executive Order subsection 1(b) as metrics for elimination?

³ "Executive Order 12838 – Termination and Limitation of Federal Advisory Committees," Government Publishing Office, February 10, 1993, accessed here: <https://www.govinfo.gov/content/pkg/WCPD-1993-02-15/pdf/WCPD-1993-02-15-Pg166.pdf>

⁴ "Federal Advisory Committee Act: Overview of Advisory Committees since 1993," Government Accountability Office, November 5, 1997, accessed here: <https://www.gao.gov/assets/110/107157.pdf>

⁵ "The Federal Advisory Committee Act (FACA) Brochure," U.S. General Services Administration, February 26, 2019, accessed here: <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/the-federal-advisory-committee-act-faca-brochure>

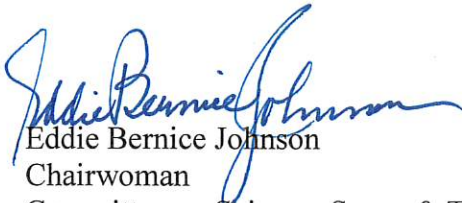
- Do you anticipate that NIST will apply for a waiver for any FACA committees to be exempted from the one-third cut?
- Do you anticipate that NIST will merge any existing FACA committees in order to cut the number of committees by one third?
- Is September 30, 2019 a reasonable deadline for completion of the tasks set forth in this Executive Order?
- What are the anticipated costs to NIST in implementing this Executive Order?

Under the “special oversight” clause of Rule X of the U.S. House of Representatives, the “Committee on Science, Space, and Technology shall review and study on a continuing basis laws, programs, and Government activities relating to nonmilitary research and development.”⁶

Please ensure your answers are transmitted to the Committee by August 1, 2019. Please produce two sets of requested responses. One set should be delivered to the Majority Staff of the Science, Space, and Technology Committee in Room 2321 of the Rayburn House Office Building and one set should be delivered to for the Minority Staff in Room #394 of the Ford House Office Building.

If you have any questions regarding this request, please have your staff contact Sara Palasits on the Majority Staff of the Science, Space, and Technology Committee at (202) 225-6375.

Sincerely,



Eddie Bernice Johnson
Chairwoman

Committee on Science, Space & Technology

⁶ Rule X, Organization of Committees, U.S. House of Representatives, accessed here: <https://www.govinfo.gov/content/pkg/HMAN-115/xml/HMAN-115-pg441.xml>