

April 14, 2020

Renee Wynn
NASA Chief Information Officer
300 E. Street SW, Suite 5R30
Washington, DC 20546
(202) 358-0001 (Office)
Via Email: Renee.Wynn@nasa.gov

Re: Request for Reconsideration: Appeal of NASA’s IQA Response of March 11, 2020

The Competitive Enterprise Institute (CEI) hereby requests reconsideration under the Information Quality Act (IQA) of the decision of Renee P. Wynn, Chief Information Officer on March 11, 2020 regarding CEI’s July 9, 2019 request for correction.

1. The Initial Decision Blatantly Violates OMB Guidelines by Failing to Give Any Substantive Response Whatsoever to CEI’s Claims

In July, 2019, CEI submitted an 11-page-long request for correction concerning the statement by NASA that “[n]inety-seven percent of climate scientists agree that climate-warming trends over the past century are extremely likely due to human activities.” Our request explained in detail the problems with NASA’s use of each of the studies that were relied on.

The Information Quality Guidelines issued by OMB require three things of all information distributed by the government: Utility, Objectivity, and Integrity. Of these, we only disputed the objectivity of the information on the NASA website. Page 1 of our request for correction notes that “As is shown below, that claim is not objective; it is neither accurate nor reliable nor unbiased.” OMB’s guidelines also require, in Implementation Update 4.3, that “the agency response should contain a point-by-point response to any data quality arguments contained in the RFC.” OMB Memo, April 24, 2019 p. 11(hereinafter “OMB Memo”). In OMB’s words, “Under the IQA and Guidelines, an agency should respond thoroughly to substantive RFCs.” *Id.*

NASA was required by OMB to respond within 120 days. The OMB Memo makes clear that “agencies will not take more than 120 days to respond to an RFC.” And yet, NASA didn’t even come close to meeting this deadline. We received NASA’s response 246 days later—more than double OMB’s maximum response time. That response included only one-sentence explanation, unrelated to any argument we made. *In fact, the response did not even mention the topic of our request.* Was NASA simply ignoring its responsibilities or did the agency spend a year trying to find some way to refute our arguments and fail to do so?

The response by Ms. Wynn skirts OMB’s key element of Objectivity, which was the focus of CEI’s correction request. Ms. Wynn claims Objectivity requires only that the information

presented be “Accurate (clear and complete).” According to OMB, “‘Objectivity’ focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased.” 67 FR 8451, 8453 (2002). Ms. Wynn totally ignores the requirements of reliability and lack of bias.

We devoted 11 pages to challenging that NASA met those requirements. Ms. Wynn’s denial included only one substantive sentence in response.

That single sentence of explanation by Ms. Wynn is: “NASA also finds this information to be accurate and clear as it does not rely on the results of a single peer-reviewed publication for facts, which is why a number of peer-reviewed papers are listed on the Web site (<https://climate.nasa.gov/scientific-consensus/>) to capture the robust nature of the scientific consensus.” That is the entirety of her response.

This single sentence response says next to nothing. We already know that a “number of peer-reviewed papers are listed on the Web site”; that is why each section of our request for correction was dedicated to a different one of them. The mere existence of these studies does not demonstrate that NASA properly used them, and NASA’s improper use is explained in our request for correction. Ms. Wynn doesn’t even try to counter that claim.

In short, despite OMB’s requirement of a point-by-point response, her denial does not respond to even a single point in our request. Nor can her denial be considered thorough as required by OMB. Her decision should be overturned.

2. Jim Bridenstine or James Morhard Should Decide This Appeal Without the Involvement of Renee Wynn or Chief of Staff Janet Karika

For reasons shown below, this Appeal should be handled by the NASA Administrator Jim Bridenstine or Deputy Administrator James Morhard, without the involvement of Ms. Wynn or Ms. Karika.

Because our appeal calls for a final decision of the agency, it can only be decided by a lawfully appointed Officer of the United States who can exercise the government’s sovereign authority pursuant to the Appointments Clause of the Constitution, Art. II, section 2, clause 2. This is explained in the Office of Legal Counsel opinion, “Officers of the United States Within the Meaning of the Appointments Clause,” <https://www.justice.gov/file/451191/download>. Such an officer would have received a commission signed by the President pursuant to Article II, section 3, clause 6.

All offices must be created by statute. The National Aeronautics and Space Act of 1958 (Pub. L. 85–568), which created NASA, only created the office of the Administrator and the Deputy Administrator of NASA, and so these are the only officers who could respond to this appeal.

Normally, the Chief Information Officer (CIO) would be responsible for creating an executive panel to review this appeal. However, that is not allowed under the new OMB guidelines as the

CIO herself issued the initial decision in this case. As OMB noted in its Implementation Update 4.5, “To ensure the integrity of the appeals process, agencies should ensure that those individuals reviewing and responding to the appeals request were not involved in the review and initial response to the RFC.” OMB Memo, p. 10. OMB goes on to note that “the same individuals who opine during the initial response should not participate in the appeals process”; instead, it should be a person who can “form[] an independent judgment of the RFC.” *Id.* For this reason, Ms. Wynn, as the initial decisionmaker, may not participate at all in the appeal process, nor can she be involved in choosing the officials to handle this appeal.

OMB requires that “staff reviewing appeals should be sufficiently senior that they are effectively able to disagree with the assessment of colleagues who prepared the initial response.” OMB Memo, p. 11. This means the individual(s) who decide this appeal must be senior to and able to effectively override Ms. Wynn as CIO.

We also understand that Chief of Staff Janet Karika was closely involved in preparing and reviewing the initial response, starting on Dec. 3, 2019. As such, Ms. Karika may not be involved in the appeal either, and whoever handles this appeal must be senior to Ms. Karika as well. Both Mr. Bridenstine and Mr. Morhard meet these criteria.

Sincerely,

Devin Watkins, Attorney
devin.watkins@cei.org
Sam Kazman, General Counsel
sam.kazman@cei.org
Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005