Congress of the United States
Washington, DC 20515

November 10, 2020

The Honorable Andrew R. Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Record and Document Preservation Requirements

Dear Administrator Wheeler:

As the 116th Congress and the Trump Administration approach the conclusion of our respective terms, we write to remind you that you and your employees, including all component agencies and offices, must comply with the record preservation obligations set forth in federal law and to remind you of your and your agency's ongoing obligations to preserve information relevant to congressional oversight.

Over the last four years, the Administration obstructed numerous congressional investigations by refusing to provide responsive information. You are obligated to ensure that any information previously requested by Congress—and any other information that is required by law to be preserved—is saved and appropriately archived in a manner that is easily retrievable.

It is imperative that you remind all employees and officials within your organization of their legal responsibility to take appropriate measures to collect, retain, and preserve all documents, communications, and other records in accordance with federal law, including the Federal Records Act and related regulations.[1] This includes electronic messages involving official business that are sent using both official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.[2] Any employee who conceals, destroys, or attempts to conceal or destroy a federal record may be subject to fine and imprisonment for up to three years.[3] We urge you to ensure that your employees and officials do not delete or destroy any official government records, including "information created, manipulated, communicated, or stored" electronically.[4]

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[1] *See* 44 U.S.C. §§ 3101-3107 (Chapter 31, Records Management by Federal Agencies); 44 U.S.C. §§ 3301-3314 (Chapter 33, Disposal of Records); and 36 C.F.R., Chapter XII, Subchapter B (Records Management).

[2] *See* 44 U.S.C. § 2911.

[3] *See* 18 U.S.C. § 2071.

[4] *See* 44 U.S.C. § 3301(a)(2) (defining "records" as inclusive of "all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form").

In addition to meeting the requirements of federal laws and regulations, we request that you preserve all information that relates to all investigations conducted during the 116th Congress, including all oversight requests or demands from Congress. Specifically, this preservation request should be construed as an instruction to preserve all documents, communications, and other information, including electronic information and metadata, that is or may be potentially responsive to a congressional inquiry, request, investigation, or subpoena that was initiated, continued, or otherwise undertaken during the 116th Congress. For purposes of this request, "preserve" means securing and maintaining the integrity of all relevant documents, communications, and other information, including electronic information and metadata, by taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, mutation, or negligent or reckless handling that could render the information incomplete or inaccessible. This includes preserving all compilations of documents that have already been gathered in response to requests, even if copies of individual documents may still exist elsewhere in the agency.

We also request that that you:

1. Exercise reasonable efforts to identify and notify all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants who may have access to potentially relevant information that they should preserve and return such information to the agency;

2. Exercise reasonable efforts to identify, recover, and preserve any potentially relevant electronic information that has been deleted or marked for deletion but is still recoverable;

3. Remind all relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, and consultants that any federal records sent or received using a nonofficial account must be forwarded to the agency for proper archiving;[5] and

4. If it is the routine practice of any relevant individuals, including current and former employees, officials, detailees, contractors, subcontractors, or consultants to destroy or otherwise alter potentially relevant information, either halt such practices as they relate to the potentially relevant information or arrange for the preservation of complete and accurate duplicates (including metadata) of such documents, communications, or other information.

Thank you for your cooperation in this matter.

[5] *See* 44 U.S.C. § 2911 (requiring disclosure of official business conducted on nonofficial electronic messaging accounts).

Sincerely,

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce

Nita M. Lowey
Chairwoman
Committee on Appropriations

James P. McGovern
Chairman
Committee on Rules

Peter A. DeFazio
Chairman
Committee on Transportation and Infrastructure

Eddie Bernice Johnson
Chairwoman
Committee on Science, Space, and Technology

Kathy Castor
Chairwoman
Select Committee on the Climate Crisis

Collin C. Peterson
Chairman
Committee on Agriculture

cc: The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Greg Walden, Ranking Member
Committee on Energy and Commerce

The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Kay Granger, Ranking Member
Committee on Appropriations