



February 28, 2002

The Honorable Ric Keller
U.S. House of Representatives
Washington, DC 20515

Dear Representative Keller:

You requested our views on the "Tourism Policy Council Technical Corrections Act of 2001," your proposed legislation to amend the United States National Tourism Organization Act of 1996 (22 U.S.C. § 2121 et seq.). This proposal would make technical corrections to the purpose and membership of the Tourism Policy Council (TPC) and create the Travel and Tourism Advisory Committee. The Department of Commerce fully supports the intention of your legislation to strengthen and increase the role of the TPC in U.S. tourism promotion efforts, and we applaud your efforts to accomplish these ends. We would also support greater Congressional participation in the TPC's meetings, for example, through presentation of oral or written testimony before the Council. The proposed legislation also raises other specific issues that are of interest to the Department; these are addressed in the enclosed technical comments. Among those issues, I should note that we have no plans to seek additional funds for this activity.

In response to the terrorist acts of September 11, 2001, Secretary Evans reconvened the TPC which held its first meeting on October 29, 2001. The TPC has subsequently met four times, and has been chaired by Assistant Secretary for Trade Development, Linda Conlin, with whom you have previously met. The TPC held its most recent meeting on February 21, 2002, and the TPC is scheduled to meet the third Thursday of every month.

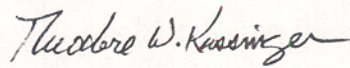
Moreover, the membership of the TPC has grown from the legislatively mandated six Federal departments or agencies, to include more than fifteen different Federal departments and agencies. In its last two meetings, the TPC has received presentations from industry representatives that included discussions on the effect that the events of September 11 had on the local Capital region economy, as well as discussions on the national recovery to date and projections for the recovery through 2003. The TPC has invited the Chairman of the Travel Business Roundtable and the President and CEO of the Travel Industry Association of America to provide presentations at a future meeting.

Thank you for the opportunity to comment on this legislation. We would be happy to work with you in addressing these or other issues to achieve our shared interest of promoting U.S. tourism. Please feel free to contact Brenda Becker, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663, to discuss these matters further.

The Honorable Ric Keller
Page 2

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,


Theodore W. Kassinger

Enclosure

TECHNICAL COMMENTS

Potential application of the Federal Advisory Committee Act (FACA) is raised by the legislation's proposed addition to the Tourism Policy Council (TPC) of the Chair of the Travel and Tourism Advisory Committee (TTAC), as a non-voting member.¹ Under section 3 of the legislation, the Chair of the TTAC shall be elected from among the TTAC's membership of private industry representatives. As currently drafted, the FACA would almost certainly apply to the TPC because, by virtue of the presence of the Chair of the TTAC, the TPC's membership would not be "composed wholly of full-time or permanent part-time officers or employees of the Federal Government." 41 CFR 102-3.40(h) (types of committees or groups not covered by FACA). The fact that the Chair would not be permitted to vote would not appear to change this conclusion. Were the intent of the legislation to be that the FACA not apply to the TPC, the simplest and most effective way to accomplish that would be by amending the United States National Tourism Organization Act of 1996 (USNTOA) (22 U.S.C. § 2121 et seq.) to specifically exempt the TPC from the FACA.²

Another drafting issue appears under new section (h)(1), which states that the TTAC is established "for the purposes of governing and supervising the activities of the Committee." This appears to be a typographical error, since the TTAC would not be charged with governing and supervising its own activities.³ We suggest deleting this language and combining new sections (h)(1) and (h)(2) to read as follows:

(1) ESTABLISHMENT AND PURPOSE - There is established the Travel and Tourism Advisory Committee for the purpose of aiding the Tourism Policy Council by providing an industry perspective on problems and solutions relating to travel and tourism in the United States and around the world.

In new section (h)(3), it may be advisable to state that the TTAC's membership "shall include," rather than "shall consist of," the several private industry representatives listed in that section. In this way, the TPC may have greater flexibility in determining the size and composition of the TTAC's membership. For example, the TPC may wish to include other sectors of the travel industry that are not mentioned in the proposed list. In addition, we suggest expanding the Committee's membership to include two representatives from small- and medium-sized travel-related businesses.

¹The draft legislation would "Insert new section: '(h) Travel and Tourism Advisory Committee.'" There is an existing section (h) relating to the now-defunct U.S. National Tourism Organization (USNTO) which should be expressly repealed to avoid confusion.

²This could be accomplished by language expressly exempting the TPC from FACA or more limited language stating that the membership of the Chair of the TTAC on the TPC "shall not in itself make the Federal Advisory Committee Act applicable" to the TPC. This language was used in the original statute to exclude TPC from FACA by virtue of the membership of the President of the now-defunct USNTO.

³We assume, for purposes of these comments, that it was not intended that the TTAC be established for the purposes of governing and supervising the activities of the TPC. The possibility that a private sector advisory committee would be charged with governing and supervising the activities of a committee composed of, inter alia, the heads of several Federal agencies would raise issues of constitutional concern.

Also in new section (h)(3), the legislation states that the members of the TTAC "shall be chosen by the Chairman of the Tourism Policy Council." However, section (h)(4) states that the TPC, as a body, "shall set forth the process for the number, terms, and appointment or election" of future TTAC members. It is important that the authority vested in the TPC, as a body, to set forth the "process" for "appointment" of Committee members under section (h)(4) not be interpreted or applied to override, or otherwise adversely affect, the authority given to the TPC Chairman under section (h)(3) to choose the members of the TTAC. Generally, advisory committee members are appointed by one Government official. Were section (h)(4) to be applied in a manner inconsistent with this practice, the ability of the TPC Chairman to charter the committee and appoint its members in the manner that best furthers the TPC's mission could be severely impacted. Thus, the legislation should make clear that the authority of the TPC under section (h)(4) shall not diminish, or otherwise adversely impact, the authority of the TPC Chair under (h)(3).

The legislation also leaves open issues regarding how the administrative/operating costs of the TTAC should be covered, and by whom. We have no plans to seek additional funding for this activity.