

June 1998

FEDERAL ADVISORY
COMMITTEE ACT

General Services
Administration's
Oversight of Advisory
Committees





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-279334

June 15, 1998

The Honorable Stephen Horn
Chairman, Subcommittee on Government Management,
Information, and Technology
Committee on Government Reform and Oversight
House of Representatives

The Honorable John Glenn
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

This report responds to your request that we assess whether the General Services Administration (GSA), through its Committee Management Secretariat, was carrying out its oversight responsibilities under the Federal Advisory Committee Act (FACA). Specifically, as agreed with your offices, we determined whether GSA had (1) ensured that federal advisory committees were established with complete charters and justification letters, (2) comprehensively reviewed each advisory committee annually, (3) submitted annual reports on advisory committees to the President in a timely manner, and (4) ensured that agencies prepared follow-up reports to Congress on recommendations by presidential advisory committees (any federal advisory committee that advises the President). We issued a report about 10 years ago in which we said that GSA was not fully carrying out these responsibilities.¹

Results in Brief

Compared to when we last reported in 1988, little had changed during the period we studied in how the Secretariat carried out its FACA responsibilities. With 963 federal advisory committees, 57 sponsoring agencies, and submissions for each committee during fiscal year 1997, GSA's Committee Management Secretariat reviewed a large amount of paperwork for the purpose of ensuring that sponsoring agencies were (1) following the requirements placed upon them by FACA and (2) implementing GSA regulations.² The Secretariat conducted these reviews while performing other duties, such as providing formal training to federal employees who were directly involved with the operations of advisory committees and collaborating with an interagency committee on

¹Federal Advisory Committee Act: General Services Administration's Management of Advisory Committee Activities ([GAO/GGD-89-10](#), Oct. 5, 1988).

²The Secretariat provided a summary table of federal advisory committee data for fiscal year 1997 after we completed our review. We have included the 1997 summary data in this report for informational purposes.

advisory committee management. Nevertheless, the Secretariat was responsible under FACA and GSA regulations for ensuring that those requirements were all fulfilled.

The GSA Secretariat had not carried out its responsibilities in the following areas:

- GSA, in consultation with the agencies, did not ensure that advisory committees were established with complete charters and justification letters as required by FACA or GSA regulations. We reviewed 203 advisory committee charters and 107 justification letters that were submitted to GSA during the first 10 months of fiscal year 1997. (Only 107 of the 203 committees were required by GSA regulations to submit justification letters.) Thirty-six percent of the charters and 38 percent of the letters did not contain one or more items required by FACA or GSA regulations. Even though required items of information were missing, such as estimated operating costs and plans for attaining balanced membership, GSA concurred in establishing all 203 advisory committees. Although GSA has no authority to stop the formation of advisory committees, it is to ensure that agencies follow the requirements under FACA and GSA regulations in forming these committees.
- GSA did not independently assess, as it conducted the annual comprehensive reviews required by FACA, whether committees should be continued, merged, or terminated. According to GSA regulations, the Secretariat is to use an advisory committee's annual report to make its review. The agency that sponsored or supported the advisory committee is to prepare the annual report, and the report is to include the agency's recommendation on whether the committee should continue. Although GSA collected the fiscal year 1996 annual reports, GSA officials said they accepted the data in them without further review, including agencies' recommendations to continue, merge, or terminate committees.³ We found this acceptance to be the norm even when information in a fiscal year 1996 annual report, such as a statement that the committee did not meet during the year and no explanation was provided, should reasonably lead to further inquiries.
- GSA did not submit most of its FACA annual reports to the President in time for him to meet the statutory reporting date to Congress. Seven of the last nine reports, covering fiscal years 1988 through 1996, were submitted to the President after the due date to Congress. As of April 27, 1998, GSA had

³At the time of our review, which was from June 1997 to April 1998, fiscal year 1996 was the latest year for which agency reports were available.

not submitted its fiscal year 1997 annual report to the President, which was due to Congress by December 31, 1997.

- GSA did not ensure that FACA-required follow-up reports on presidential advisory committee recommendations were prepared for Congress. Of the 17 presidential advisory committee reports issued in fiscal years 1995 and 1996 that GSA said required follow-up reports, agency officials said that 4 were erroneously listed in the President's annual report to Congress as requiring follow-up reports, and none of the remaining 13 follow-up reports were made to Congress.

Secretariat officials told us that agencies must take greater responsibility for preparing complete charters and justification letters and committee annual reports and for sending follow-up reports to Congress. The officials also said they plan to ask Congress to change the reporting deadline for the President's annual report to Congress to a later date. Regardless of the responsiveness of agencies, FACA has given the Secretariat responsibilities for ensuring that agencies satisfy the requirements for forming and operating advisory committees, and the Secretariat is not carrying out these responsibilities.

Background

In 1972, Congress passed FACA in response to a concern that federal advisory committees were proliferating without adequate review, oversight, or accountability. FACA states that Congress intended that the number of advisory committees be kept to the minimum necessary, and that the advisory committees operate under uniform standards and procedures in the full view of Congress and the public.

Although Congress recognized the value of advisory committees to public policymaking, it included in FACA measures intended to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open as possible to the public, and (3) Congress is kept informed of the committees' activities. Congress ensured through FACA that the public had access to advisory committee information and activities, including charters, reports, and transcripts of committee meetings and other records. Under FACA, the President, the Director of the Office of Management and Budget (OMB), and agency heads are to control the number, operations, and costs of advisory committees.

To help accomplish these objectives, FACA directed that a Committee Management Secretariat be established in OMB to be responsible for all

matters relating to advisory committee administration. In 1977, the President transferred advisory committee functions from OMB to GSA. The President also delegated to GSA all of the functions vested in the President by FACA, except that the annual report to Congress required by section 6(c) of the act was to be prepared by GSA for the President's consideration and transmittal to Congress. To fulfill its responsibilities, GSA has developed regulations and other guidance to assist agencies in implementing FACA, has provided training to agency officials, and was instrumental in creating and has collaborated with the Interagency Committee on Federal Advisory Committee Management. GSA is also in the process of linking an internet-based reporting system with its internal database that is used to track committee transactions.

FACA requires that each agency head designate an advisory committee management officer to help manage the committees, and that designated federal officials shall be responsible for the individual committees. According to FACA, a committee's designated federal official must approve or call a committee meeting, approve the agenda, and chair or attend each meeting.

In February 1993, the President issued Executive Order 12838, which directed agencies to reduce by at least one-third, the number of discretionary advisory committees by the end of fiscal year 1993. Discretionary committees are those created under agency authority or authorized by Congress. OMB, in providing guidance to agencies on the executive order, established a maximum ceiling number of discretionary advisory committees for each agency and a monitoring plan. Under the guidance, agencies were to annually submit committee management plans to OMB and GSA. These plans were to include performance measures that were to be used to evaluate each committee's goals or mission, information on new committees planned for the upcoming year, actions taken to maintain reduced committee levels, and the results of a status review of nondiscretionary committees, which are committees mandated by Congress or established by the President. OMB approval was required before the creation of new discretionary committees. Later, in 1995, OMB dropped the requirement for prior approval of new committees, as long as an agency was beneath its approved ceiling.

Since fiscal year 1988, the number of federal advisory committees has declined. There were 1,020 advisory committees in fiscal year 1988. The number of advisory committees grew to 1,305 in fiscal year 1993 and then declined over the next several years to 963 committees in fiscal year 1997.

This decrease occurred after the President's February 1993 executive order to reduce the number of advisory committees.

Advisory committees are made up of individuals, not organizations, and a total of 36,586 individuals served as members of the 963 committees in fiscal year 1997. Members of the 1,020 committees in fiscal year 1988 numbered 21,236 individuals. From fiscal years 1988 to 1997, the number of individuals serving on advisory committees had generally increased. Advisory committees incur costs to operate, and GSA reported that the cost to operate the 963 committees in fiscal year 1997 was about \$178 million. However, the cost to operate the 1,020 committees in fiscal year 1988 was about \$93 million. The costs incurred over the 9-year period were on a steady increase through fiscal year 1992, after which they began to increase only sporadically. In constant 1988 dollars, the costs to operate advisory committees went from about \$93 million in fiscal year 1988 to about \$136 million in fiscal year 1997.

On average, between fiscal years 1988 and 1997, the number of members per advisory committee increased from about 21 to 38, and the cost per advisory committee increased from \$90,816 to \$184,868. In constant 1988 dollars, the average costs per advisory committee increased from \$90,816 to \$140,870 over the same period. Appendix I contains statistics on the number of federal advisory committees and their (unadjusted) costs and membership from fiscal years 1988 through 1997.

In 1988, we reported that GSA had focused its oversight responsibilities under FACA on preparing the President's annual reports to Congress and issuing guidance to agencies.⁴ We found that GSA had not appropriately ensured that (1) advisory committees were properly established, (2) committees were reviewed annually, (3) annual reports were submitted to the President before they were due to Congress, and (4) follow-up reports on presidential advisory committees' recommendations were prepared for Congress. At that time, GSA attributed these shortcomings to insufficient staff and management inattention.

The Secretariat is under the GSA Associate Administrator for Governmentwide Policy. For fiscal year 1997, the Secretariat had eight employees and a budget of \$645,000 (\$491,490 in constant 1988 dollars). It had five employees in September 1988 and a budget of \$220,000 for fiscal year 1988.

⁴GAO/GGD-89-10.

Scope and Methodology

To determine whether GSA had ensured that federal advisory committees were established with complete charters and justification letters, we obtained from GSA advisory committee charters and justification letters that agencies had submitted from October 1, 1996, through July 21, 1997. The charters were for 203 committees, and the justification letters were for 107 of the 203 committees. GSA regulations require justification letters for discretionary committees (107 of the 203 committees) but not for nondiscretionary committees (96 of the 203 committees). We reviewed the charters and letters to determine whether each contained the items of information (e.g., the committee's objectives and why the committee is essential to the agency) required by FACA and GSA regulations. If an item of information was missing from the charter or letter, we reviewed information in the applicable GSA file to ascertain whether the file documented that GSA acted to obtain the missing item.

To determine whether GSA had comprehensively reviewed each advisory committee annually, we first requested from GSA the annual report for each of the 1,000 advisory committees that existed in fiscal year 1996. In total, we reviewed the annual reports for 978 advisory committees; the reports for 22 committees were missing from GSA's files. According to GSA regulations, the Committee Management Secretariat is to make its annual review of each committee by using the committee's annual report. We read the reports to see if they contained the information that GSA regulations prescribe. We then discussed with Secretariat officials how they used information from the reports to make comprehensive reviews.

To determine whether GSA had submitted annual reports on advisory committees to the President in a timely manner, we examined documentation regarding when GSA had submitted annual reports to the President for fiscal years 1988 through 1996. We compared the dates on the letters GSA used to transmit the reports to the President with the date that FACA requires the President to report to Congress, which is December 31, or 3 months after the end of a fiscal year.

To determine whether GSA had ensured that follow-up reports to Congress were prepared on recommendations by presidential advisory committees, we contacted agencies' committee management officers to ascertain whether they knew of the follow-up requirement and whether the follow-up reports were submitted to Congress. According to GSA regulations, agencies are to prepare the reports and submit them to Congress, but GSA is to ensure that it is done. We discussed GSA's role with Secretariat officials and contacted committee management officers for the

17 cases that were identified in the President's annual reports to Congress for fiscal years 1995 and 1996 as requiring follow-up reports. These officers were employees of the 9 agencies that were accountable for the 17 cases.

In general, to identify and understand GSA's oversight responsibilities, we interviewed Secretariat officials and reviewed applicable laws, regulations, and GSA guidance to agencies regarding advisory committee activities. We did not assess the extent to which GSA provided the agencies with guidance on advisory committee activities beyond the guidance for establishing advisory committees, the comprehensive annual reviews, and the follow-up reports on presidential advisory committees. Also, we did not assess OMB's role in dealing with advisory committees beyond reviewing its guidance to agencies for implementing Executive Order 12838.

We did our work in Washington, D.C., between June 1997 and April 1998 in accordance with generally accepted government auditing standards. After we completed our work, the Secretariat provided a summary table of advisory committee data for the entire 1997 fiscal year. These data are to be included in the President's annual advisory committee report for fiscal year 1997, and they were incorporated in this report for comparison to previous years.

We requested comments on a draft of this report from the Administrator of GSA and the Director of OMB or their designees. Written comments provided by GSA are discussed near the end of this letter and are reproduced in appendix II. An OMB official responsible for federal advisory committee matters provided oral comments on May 13, 1998, which are discussed near the end of this letter.

GSA Did Not Ensure That Advisory Committees Were Established With Complete Charters and Justification Letters

FACA and GSA regulations require that agencies consult with GSA before establishing advisory committees. As part of this consultation, FACA requires agencies to submit charters for all committees, and GSA regulations require them to also submit justification letters for discretionary advisory committees. These documents must contain specific information. FACA outlines that agencies are to include 10 specific items in the charter, including the committee's objectives and scope of activities, the time period necessary to carry out its purpose, and the estimated annual staff years and cost. GSA regulations state that agencies must address three items in the justification letter: why the committee is essential to conduct the agency's business, why the committee's functions

cannot be performed by the agency or other means, and how the agency plans to attain balanced membership.

GSA's role is to review agency proposals to establish advisory committees and determine whether FACA requirements and those imposed by regulation are met. The regulations say that GSA is to review the proposals and notify the agency of its views within 15 days, if possible. However, GSA does not have the authority to stop the formation of an advisory committee. Nor does it have the authority to terminate an existing committee. GSA can only recommend to the President, Congress, or an agency head that an advisory committee not be formed or that an existing committee not be continued.

In our review of the 203 charters and 107 justification letters submitted to GSA from October 1, 1996, through July 21, 1997, we found that 36 percent of the charters and 38 percent of the letters were missing at least one item that was required by FACA or GSA regulations. Seventy-four charters were missing a total of 85 items, such as stating the period of time necessary for the committee to carry out its purpose and estimating annual operating costs and staff years. For the justification letters, 41 were missing a total of 88 items, such as a description of the agency's plan to attain balanced membership. Appendix III shows the number of specific items that we found missing in the charters and justification letters. We found minimal evidence in GSA's files to indicate that GSA raised questions about these missing items. GSA completed its reviews of the charters and notified the agencies, generally by letter, of its views within an average of 5 days and positively concurred in establishing the 203 advisory committees.

Secretariat officials told us that, while they concurred with the need for the 203 committees, the agencies were responsible for ensuring that the charters and justification letters were properly done. These officials said that most charters and letters were done well and met the spirit of FACA. They also said that the problems that did exist relating to incomplete or inadequate charters and letters may have occurred due to review oversight by Secretariat analysts. The officials believed that some of the missing items of information were more significant than others. For example, they believed that missing information pertaining to estimated annual operating costs and staff years and a description of the agency's plan to attain a fairly balanced membership were more significant than information on the agency or official to whom the committee reports and the time necessary for the committee to carry out its purpose. Nevertheless, the officials recognized that all of the required information should be in the charter and

justification letters. They also said that they plan to provide the analysts with tools to better enable them to make comprehensive reviews.

Advisory Committees Were Not Comprehensively Reviewed Annually

FACA requires GSA to make an annual comprehensive review of each advisory committee to determine whether it is carrying out its purpose, whether its responsibilities should be revised, and whether it should be abolished or merged with another committee. After completing the reviews, GSA is required to recommend to the President and to the agency head or Congress any actions GSA deems should be taken.

GSA regulations require that agencies prepare an annual report for each committee, including the agencies' recommendations for continuing, merging, or terminating committees.⁵ For continuing committees, the annual reports are to describe such things as how the committee accomplishes its purpose; the frequency (or lack) of meetings and the reason for continuing the committee; and why it was necessary to have closed committee meetings, if such meetings were held. The annual reports also are to include the committee's costs.

GSA's regulations call for it to use the data it receives in the agencies' annual reports, including the agencies' recommendations to continue or terminate the committees, in conducting the comprehensive annual review. However, GSA did not use the data provided by the agencies to assess on its own whether committees were carrying out their purposes, whether their responsibilities should be revised, or whether the committees remain necessary.

We reviewed 978 advisory committees' annual reports that were submitted to GSA by the agencies for fiscal year 1996. We were unable to review another 22 reports that GSA reported receiving because they were missing from GSA's files. For those annual reports that we reviewed, agencies generally reported the required information, with the exception of explaining why some continuing committees did not meet during the year.

According to data GSA obtained from the annual reports, 212 advisory committees (about 21 percent of the total number of 1,000 committees) did not meet during fiscal year 1996. Agencies did not have to explain why no meetings were held for the 113 new and terminated committees in 1996. However, agencies were required to explain why the remaining 99

⁵Fifty-nine agencies sponsored the 1,000 federal advisory committees in fiscal year 1996. The 59 agencies were offices from the Executive Office of the President; cabinet-level departments; independent agencies; and federal boards, commissions, and councils.

continuing committees did not meet. In our review of the 99 committees' annual reports, we found that 47 gave reasons why the committees had not met, including reasons such as the committees' having no agenda items to consider, lacking funding, and having delays in appointing members. Fifty-two annual reports did not explain why the committees had not met or why they should continue. We found no evidence that GSA had requested follow-up information on why the committees had not met or why the agencies believed that the committees should continue.

Secretariat officials told us that they do not verify the agencies' data, and that they accept the data without further review, including the agencies' recommendations to continue, merge, or terminate committees. The officials said they could not undertake reviews on their own because they do not have the expertise or program knowledge to determine which committees should be continued or terminated. Regardless of whether this is the case, we believe that it is incumbent upon Secretariat officials to follow up with agencies to determine why committees have not met before accepting agencies' recommendations that the committees be continued.

Secretariat officials also told us that they have held discussions with congressional staff about the possibility of reducing the number of committees mandated by Congress that may no longer be warranted. Such committee terminations would require legislation. Although we did not evaluate this issue as a part of this review, we believe it illustrates the benefits to GSA of following up with agencies when they do not report why committees did not meet or why the agencies believed the committees should continue. For example, of the 52 committees that did not explain why they did not meet in fiscal year 1996, 25 were mandated by Congress. By delving into the specifics of why no meetings were held, GSA might develop information to assist Congress in determining the potential for terminating some congressionally mandated committees by clarifying reasons to continue them. We recognize that there are legitimate reasons why committees may not meet in any given year.

Annual Reports Were Not Submitted to the President in a Timely Manner

The President is required to report annually to Congress on the activities, status, and changes in the composition of advisory committees. The annual reports are due to Congress by December 31 for each preceding fiscal year. GSA prepares the annual reports for the President on the basis of information provided in agencies' annual advisory committee reports.

GSA did not submit most of its annual reports to the President in time for him to meet the December 31 reporting date to Congress. For seven of the last nine annual reports, covering fiscal years 1988 through 1996, GSA transmitted the reports to the President after they were due to Congress. In the last 4 years, one report was delivered to the President 5 days before the due date to Congress; three reports were delivered, on average, about 3 months after the due date.

As of April 27, 1998, GSA had not submitted the fiscal year 1997 report to the President. According to Secretariat officials, the December 31 reporting date to Congress is unattainable because, among other things, agencies have other end of fiscal year reporting requirements, in addition to the advisory committee reports. Secretariat officials also told us that they plan to ask Congress for a later reporting date. We did not examine the reasonableness of the December 31 reporting date.

GSA Did Not Ensure That Follow-Up Reports to Congress on Presidential Committee Recommendations Were Prepared

FACA requires the President, or his delegate, to report to Congress within 1 year on his proposals for action or reasons for inaction on recommendations made by a presidential advisory committee. According to FACA's legislative history, these follow-up reports are intended to justify the investments in the advisory committees, provide accountability to the public and Congress, and require the President to state his response to the advisory committees' recommendations.

According to GSA regulations, the agency providing support to the advisory committee is responsible for preparing and transmitting the follow-up report to Congress. However, the regulations also state that the Secretariat (1) is responsible for ensuring that the follow-up reports are prepared by the agency supporting the presidential committee and (2) may solicit OMB and other appropriate organizations to help, if needed, to obtain agencies' compliance.

GSA identified 17 presidential advisory committee reports in the President's annual reports for fiscal years 1995 and 1996 that required follow-up reports. We contacted the nine agencies that were responsible for the follow-up reports to determine whether the reports were prepared within the year and delivered to Congress. According to agency officials, follow-up reports were not required in 4 of the 17 cases because the advisory committees were erroneously listed as having issued a report with recommendations to the President. Follow-up reports were required in the remaining 13 cases but, according to agency officials, none were

transmitted to Congress. These presidential advisory committees included, for example, the Glass Ceiling Commission, the President's Cancer Panel, and the Federal Council on the Aging. Six of the nine committee management officers told us that they were unaware of the reporting requirement. Secretariat officials said that agencies are responsible for preparing and delivering the follow-up reports to Congress; therefore, they had not contacted the nine agencies to see whether the reports were prepared and delivered.

Conclusions

Although it has no authority to stop a federal advisory committee from being formed or to terminate an existing committee, GSA is obligated to ensure that its FACA responsibilities are fulfilled completely and in a timely manner. These responsibilities are not insignificant. Congress imposed them to help ensure that federal advisory committees are needed, that the committees are properly managed, and that Congress is kept informed of the committees' activities in a timely manner. Although we recognize that GSA believes it does not have the expertise or program knowledge to determine whether federal advisory committees are needed, it has the authority to ask agencies to provide justification for their recommendations. For example, GSA could follow up with agencies to determine why committees have not met before accepting agencies' recommendations that the committees be continued.

The Committee Management Secretariat intends to ask Congress to move to a later date the reporting deadline for the President's annual report to Congress on the activities of federal advisory committees. The Secretariat's view and proposed action do not relieve it of its responsibilities under FACA, and the Secretariat has not fulfilled those responsibilities.

Recommendation

We recommend that the Administrator of GSA direct the Committee Management Secretariat to fully carry out the responsibilities assigned to it by FACA in a timely and accurate manner. In particular, the Secretariat should (1) consult with the agencies to ensure that the charters and justification letters for federal advisory committees contain the information required by law or regulation, (2) follow up with agencies when their annual reports contain information that raises questions about whether committees should be continued, and (3) ensure that agencies file the required follow-up reports to Congress on presidential advisory committee recommendations. The Secretariat should also make the

necessary arrangements with agencies to submit its annual report to the President on time or follow through with its intention to ask Congress to move the reporting date.

GSA and OMB Comments and Our Evaluation

GSA and OMB provided comments on a draft of this report. In an April 27, 1998, letter (see app. II), the GSA Administrator said the Associate GSA Administrator for Governmentwide Policy will ensure that the Committee Management Secretariat takes immediate and appropriate action to implement our recommendation. The Administrator also said GSA will continue to improve its oversight of advisory committees by (1) proposing amendments to FACA to address some of the issues addressed by our report; (2) proposing new governmentwide regulations relating to FACA in June 1998; and (3) finalizing its new internet-based reporting system by the end of fiscal year 1998, which will allow agencies to electronically transmit data to GSA.

On May 13, 1998, an OMB official responsible for advisory committee matters said that we had conducted a thorough review of GSA's oversight responsibilities in meeting FACA's procedural requirements, and that GSA appeared to have undertaken some corrective actions that will address many of our concerns and had scheduled other corrective actions during 1998. The OMB official said they would work with GSA to ensure the success of the GSA efforts.

The GSA Administrator and the OMB official made additional comments, which we address here and as appropriate in appendix II for GSA.

In general comments, GSA said that the draft report had not fully examined the extent to which GSA's actions have achieved FACA's principal stated outcomes of accountability for committee accomplishments and public access to committee deliberations and products. In addition, GSA said it has sought through its actions to strengthen the ability of other responsible officials at the agency level to perform more adequately their required FACA responsibilities.

We recognize that GSA plays a broad role in overseeing advisory committee activities and are aware of its past initiatives, such as the creation of the interagency committee on FACA; the governmentwide training program for agency personnel who manage advisory committees; and the reduction of discretionary advisory committees under Executive Order 12838, which we mentioned in this report. But GSA also has a narrower, more focused

role of carrying out its specific responsibilities that FACA and GSA regulations require. This latter role was the focus of this report. Nevertheless, we have cited some of GSA's other activities in the text of this report.

GSA also said that it is in the process of linking its new internet-based reporting system with an internal FACA database that it uses to track committees. By capturing data electronically, GSA expects that gaps in required data will be identified more easily and corrected contemporaneously. We believe such a system, if successful, should enable GSA to better ensure that its analysts have the full range of required information available to them as they perform GSA's required FACA oversight responsibilities.

GSA and OMB took exception to our finding that advisory committees were not comprehensively reviewed by GSA. GSA and OMB stated that advisory committees are reviewed annually by GSA through (1) the annual reporting process used by the agencies to certify the need for specific committees (which are the advisory committee annual reports) and (2) the annual process developed to implement Executive Order 12838 and OMB Circular A-135, which require the committee management plans.

Under FACA, GSA has the responsibility to judge whether there is a convincing case for continuing a committee and cannot delegate this responsibility to the agencies under current law. The advisory committee annual reports were the basis for our analysis and conclusion that GSA was not independently assessing whether the committees should be continued or terminated. The committee management plans are used primarily to ensure that the number of discretionary advisory committees within the agencies does not exceed the ceiling established under Executive Order 12838 and to focus on the need for new, not existing, committees. A discussion of what should be included in the plans can be found in the Background section of this report. The management plans that we reviewed did not contain all of the information that would be needed for GSA to determine or question the continuing need for committees. For example, an explanation of why a committee had not met during the year is not required to be included in the management plan. Thus, we have not changed our conclusion.

We are sending copies of this report to the Chairman, Senate Committee on Governmental Affairs; the Ranking Minority Member, House

Subcommittee on Government Management, Information, and Technology; the Chairmen and Ranking Minority Members of the House Committee on Government Reform and Oversight and other interested congressional committees; the Administrator, GSA; the Director, OMB; and other interested parties. We will also make the report available to others on request.

Major contributors to this report are listed in appendix IV. If you have any questions about this report, please call me on (202) 512-8676.



Michael Brostek
Associate Director, Federal Management
and Workforce Issues

Contents

| | |
|--|----|
| Letter | 1 |
| Appendix I Federal Advisory Committee Statistics During Fiscal Years 1988-97 | 18 |
| Appendix II Comments From the General Services Administration | 19 |
| Appendix III Occurrence of Required Items Missing in Charters and Justification Letters Submitted to GSA From October 1, 1996, to July 21, 1997 | 27 |
| Appendix IV Major Contributors to This Report | 28 |

Abbreviations

| | |
|------|---------------------------------|
| FACA | Federal Advisory Committee Act |
| GSA | General Services Administration |
| OMB | Office of Management and Budget |

Federal Advisory Committee Statistics During Fiscal Years 1988-97

| Fiscal year | Total number of committees | Number of discretionary committees | Total costs^a (millions) | Number of committee members^b |
|--------------------|-----------------------------------|---|---|--|
| 1988 | 1,020 | 696 | \$92.6 | 21,236 |
| 1989 | 1,042 | 636 | 98.4 | 22,960 |
| 1990 | 1,128 | 721 | 112.3 | 22,391 |
| 1991 | 1,212 | 783 | 132.6 | 27,580 |
| 1992 | 1,230 | 767 | 146.3 | 29,020 |
| 1993 | 1,305 | 833 | 143.9 | 28,317 |
| 1994 | 1,195 | 739 | 133.4 | 30,446 |
| 1995 | 1,110 | 643 | 157.0 | 29,766 |
| 1996 | 1,000 | 530 | 148.5 | 29,511 |
| 1997 | 963 | 491 | 178.0 | 36,586 |

^aThis column does not include underreported Department of Health and Human Services costs of \$3.9 million in fiscal year 1996 and potentially similar but unknown amounts for fiscal years 1994 and 1995. These costs were included in the fiscal year 1997 statistic. Costs in the table have not been adjusted for inflation.

^bThis column does not include underreported Department of Health and Human Services committee members of 5,057 and 5,818 in fiscal years 1995 and 1996, respectively. These committee members were included in the fiscal year 1997 statistic.

Source: Annual Reports of the President on Federal Advisory Committees.

Comments From the General Services Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Administrator
General Services Administration
Washington, DC 20405

April 27, 1998

Mr. Michael Brostek
Associate Director
Federal Management and
Workforce Issues
General Accounting Office
Washington, DC 20548

Dear Mr. Brostek:

Enclosed are comments on the General Accounting Office's (GAO's) draft report entitled "Federal Advisory Committee Act: General Services Administration's Management Oversight of Federal Advisory Committees" (GAO code 410297).

As noted in the report, substantial progress has been made toward controlling the number and costs of advisory committees directly established by the executive branch. Those actions taken by the General Services Administration (GSA) to accomplish this major policy objective of the Federal Advisory Committee Act (FACA), including the introduction of a new Internet-based reporting system during fiscal year 1997, will be extended to address other opportunities for improvement highlighted by GAO.

In recognizing the enhanced role of advisory committees in strengthening collaboration for better Federal decisionmaking, we remain committed to working with the Office of Management and Budget (OMB) and those agencies sponsoring advisory committees to implement all FACA requirements.

In addition, GSA will continue to improve its oversight of advisory committees by leveraging those roles and responsibilities directly assigned by the Act to the Congress and individual agencies. As indicated in our comments, we are engaged in a current dialogue with those committees in the Senate and the House of Representatives having jurisdiction over FACA concerning potential amendments to the Act which will speak to some of the issues raised in the draft report. Specific proposals to emphasize clearly those critical management and oversight functions performed by our customer agencies will be included within these discussions.

Thank you for the opportunity to comment on the draft report. Should your staff have any questions, they may contact Mr. James L. Dean, Director of the Committee Management Secretariat, at (202) 273-3563.

Sincerely,

A handwritten signature in black ink that reads "David J. Barram".

David J. Barram
Administrator

Enclosure



Appendix II
Comments From the General Services
Administration

Comments of the General Services Administration on
The General Accounting Office's Draft Report, "Federal Advisory
Committee Act: General Services Administration's
Management Oversight of Federal Advisory Committees."

General Comments

The draft report represents a limited assessment of actions taken by the General Services Administration (GSA) to improve its implementation of the Federal Advisory Committee Act (FACA) since 1988. During that year, the General Accounting Office (GAO) conducted a similar review (GAO/GGD-89-10; October 1988) which, like the draft report, focused primarily on the extent to which GSA completely fulfilled FACA's procedural requirements. Neither the draft report nor its predecessor fully examined the extent to which GSA's actions have achieved the Act's principle stated outcomes of accountability for committee accomplishments and public access to committee deliberations and products.

While the draft report partially acknowledges that GSA's actions to limit the number of discretionary advisory committees have been successful, its description of strategies undertaken to achieve these results since 1988 should be strengthened. Since GAO's last review, a continuing array of Administration, congressional, and GSA initiatives have been developed to reinforce the multi-level oversight structure established by FACA and to refine its policy provisions. For example:

- In 1988, GSA led a study commissioned by the President's Council on Management Improvement (PCMI). This effort resulted in the creation of the Interagency Committee on FACA, the establishment of a governmentwide training program for Committee Management Officers and Designated Federal Officials, and the issuance of OMB Bulletin 89-08, "Improved Management of Federal Advisory Committee Operations." Other PCMI recommendations were incorporated in revisions to GSA's Final Rule implementing the Act during October 1989.
- Other actions to address the 1988 GAO review included the issuance (June 1990) of governmentwide guidance on follow-up reports on Presidential committee recommendations required by section 6(b) of the Act, and the development of a new database to track committee transactions (1991). The latter improvement allowed GSA to issue a separate annual comprehensive review (ACR) of all committees during February 1992.
- Since 1988, five legislative efforts have taken place: two by the Senate to amend the Act to strengthen ethics requirements for committee members, and effect other technical amendments (not enacted); one by the Senate and the Administration to terminate statutory committees (not enacted); one by the Administration to exclude certain intergovernmental activities from FACA (enacted); and one by the House and Senate to clarify FACA's coverage to the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) (enacted).

**Appendix II
Comments From the General Services
Administration**

-2-

GSA continues to exercise a leadership role in achieving the policy goals established by Executive Order 12838 of February 10, 1993, "Termination and Limitation of Federal Advisory Committees," and its implementing instructions, OMB Circular A-135, dated October 5, 1994. Using these policies as a foundation, GSA began an initiative during fiscal year 1995 to identify needed changes to its governmentwide regulations and related business processes. These activities will culminate in the development of a new proposed rule implementing FACA during June 1998.

In summary, GSA has consistently addressed many of the issues discussed in the draft report with a view toward achieving the principal outcomes envisioned by FACA. At the same time, GSA also has sought to strengthen the ability of other responsible officials at the agency level specified by the Act to perform more adequately their required FACA responsibilities.

GAO Recommendation

The Administrator of GSA (should) direct the Committee Management Secretariat to carry out in a full, timely, and accurate manner the responsibilities assigned to it by FACA. In particular, the Secretariat should (1) consult with the agencies to ensure that the charters and justification letters contain the information required by law or regulation, (2) follow-up with agencies when their annual reports contain information that raises questions about whether committees should be continued, (3) submit its annual report to the President on time, and (4) ensure that agencies file the required follow-up reports on Presidential advisory committee recommendations.

GSA Comment

GSA's Associate Administrator for Governmentwide Policy will assure that the Committee Management Secretariat takes immediate and appropriate action to implement GAO's recommendation. Additional comments are provided below relating to specific actions that are underway or planned to address those findings upon which the GAO's recommendation is based.

GAO Finding

GSA had not ensured that all advisory committees were established with complete charters and justification letters.

GSA Comment

GSA agrees with GAO's finding that the Committee Management Secretariat can do more to assure that information required to be supplied by agencies sponsoring advisory committees is accurate and complete. However, additional analysis is needed in order to fairly assess GSA's and the agencies' compliance with the Act.

See comment 1.

**Appendix II
Comments From the General Services
Administration**

-3-

For example, appendix II of the draft report contains a breakdown of those data elements which were determined by GAO to be missing from agency documentation establishing or renewing advisory committees. While the report concludes that 36 percent of the committee charters reviewed and 38 percent of the accompanying justifications for discretionary committees omitted a significant amount of required information, GSA believes these conclusions are not fully informative.

GAO reviewed 203 committee charters with a combined total of 2,030 data elements. Based on that potential universe, GAO determined that 85 data elements, or 4.2 percent, were missing. Of the 85 identified discrepancies, 33 elements related to the period of time necessary for a committee to carry out its purpose. As discussed with GAO's staff, 95 percent of all advisory committees submitted to GSA for review are of a continuing nature, and a default presumption of two years (based upon the "sunset" provision in section 14(a) of FACA) is applied. Removing these 33 from the total number of identified discrepancies yields an overall error rate of 2.6 percent.

GAO also reviewed 107 justification letters containing additional information required by GSA's existing regulations and determined that 88 data elements from 41 submissions were missing. As discussed with GAO's staff, GSA is in the process of revising its regulations to eliminate redundant information and certifications between agency annual report submissions, consultation letters, and annual plans detailing the need for discretionary committees as required by OMB Circular A-135. Two of the affected data elements, explanations of why a committee is essential and not duplicative of other ongoing efforts, represent 61.4 percent of the total discrepancies identified. With a potential universe of 321 data elements, an actual error rate of 10.6 percent would be achieved if these two items were removed from the analysis.

GSA is in the process of linking its new Internet-based reporting system with its internal database used to track committees at the transactional level. New input screens have been added to encompass the specific data elements and certifications required by FACA and GSA's regulations. These improvements will be completed during May 1998.

By the end of fiscal year 1998, agencies will have the option of consulting with GSA regarding the establishment, renewal, or termination of advisory committees via the Internet. By capturing data electronically, gaps in the required data will be identified more easily and corrected contemporaneously. In addition, this process will facilitate other required planning activities, including those specified by E.O. 12838 and OMB Circular A-135.

See comment 2.

**Appendix II
Comments From the General Services
Administration**

-4-

GAO Finding

Advisory Committees were not comprehensively reviewed annually.

GSA Comment

GSA does not agree with GAO's finding that the annual comprehensive review (ACR) is not being accomplished.

As noted in GSA's general comments, advisory committee activities are reviewed on a continuing basis through the annual reporting process used by agency heads to certify the need for specific committees and by OMB and GSA through the annual process developed to implement E.O. 12838 and OMB Circular A-135. Similar review processes have been used since 1988, as outlined above, and the net result of these efforts is reflected in reduced numbers of discretionary advisory committees, relatively stable costs, and enhanced productivity. In addition, GSA has successfully worked with OMB and the Congress to stem increases in the numbers of new statutory advisory committees.

In light of the scope, depth, and interrelationships of these ongoing initiatives, GSA believes that an isolated process to implement the ACR would not be productive.

GAO Finding

Annual reports were not submitted to the President in a timely manner.

GSA Comment

GSA agrees with GAO's finding and has taken positive steps to ensure that the data required to be submitted to the Congress in support of its legislative oversight function is more timely.

One of the most significant historical reasons for the delays documented by the GAO resulted from the need for GSA and its regulatory partners to perform extensive data checks based on a manual, paper-driven system. During fiscal year 1997, GSA introduced a new Internet-based governmentwide shared system for use in compiling the "Annual Report of the President on Federal Advisory Committees" to the Congress. Over 4,000 individuals within the executive branch played a role in preparing individual committee reports using this new tool.

Governmentwide data collected over the Internet was finalized during the third week of March 1998, and immediately made available to interested committee staff of the Senate and House of Representatives. GSA believes that subsequent electronic reports will be available much earlier. In addition, GSA will request the Congress to amend the Act to change the due date for the published report from December 31 to March 15 of each year.

-5-

GAO Finding

GSA had not ensured that follow-up reports to Congress on Presidential committee recommendations were prepared.

GSA Comment

GSA agrees with GAO's finding and is in the process of clarifying its existing regulations and supplemental guidance to assure this requirement is consistently met in the future.

Presidential advisory committees may be either established by the President or the Congress and typically are related to specific agencies or programs within the executive branch. Accordingly, they are assigned to an agency or other entity within the executive branch for policy-level support during their tenure and any residual activities, such as complying with FACA's requirements for follow-up reports, are similarly delegated.

Each year, GSA provides a detailed listing within the annual report of Presidential advisory committees for which follow-up reports are required to be submitted to the Congress. This listing is reviewed by the Committee Management Officers of the responsible agencies at least twice prior to publication of the final report. From the information provided by GAO, it is apparent that GSA needs to remind agencies more strongly of this requirement.

Other GSA Comments

Within its discussion of GSA's actions to prepare the President's annual report, GAO notes that GSA failed to report costs of \$3.9 million in fiscal year 1996 for 53 Department of Health and Human Services (HHS) advisory committees. GAO correctly notes that HHS had erroneously reported these costs in the wrong section of GSA's reporting forms.

GSA acknowledges its failure to catch this error. However, GSA had previously taken action in fiscal year 1994, through input to an ongoing HHS Inspector General audit of National Institutes of Health (NIH) FACA reporting practices, to avert an emerging problem. Accordingly, GSA was under the impression that the issue had been satisfactorily resolved.

See comment 3.

The following are GAO's comments on GSA's April 27, 1998, letter.

GAO Comments

1. Although agreeing that not every committee charter and justification letter that we reviewed included all of the required information, GSA suggested that the 36-percent error rate in the charters and the 38-percent error rate in the justification letters were misleading. Regarding committee charters, GSA said that a fairer assessment of GSA's and agencies' compliance with FACA would be to determine the error rate on the basis of the number of data items found not to be in compliance (85) divided by the total number of data items in the 203 charters we reviewed (2,030). This calculation provides an error rate of 4.2 percent. We do not believe that this would be a meaningful analysis because the charters or justification letters are the unit of analysis. That is, FACA and GSA regulations require each charter or justification letter to include a full set of specific data so that GSA analysts and others can properly and fully assess whether the committee is needed and whether it meets the FACA requirements for public participation and disclosure.

GSA said that among the 85 missing items in the charters that we identified, 33 related to the period of time necessary for a committee to carry out its purpose. GSA said that 95 percent of all charters submitted to GSA for review are for advisory committees that are of a continuing nature, and that a default presumption of 2 years (based upon the sunset provision of FACA) is applied. GSA suggested that the default presumption mooted the absence of a stated period in the charters. It said that removal of these 33 data items from the 85 found to be in error would result in an overall error rate of 2.6 percent.

We cannot ignore these 33 data items in an analysis of compliance with FACA requirements. Congress specifically required that charters include the time necessary for a committee to carry out its purpose, just as it required that charters include the committee's termination date if it is less than 2 years after the committee is established. We believe that Congress included these two items, as well as the other eight items, in the charters to help keep Congress and the public informed about committee activities. Further, it seems to us that a benefit of including such information in the charters is to help agencies focus in the beginning of the process on the amount of time the committees should be taking to accomplish their purposes.

2. GSA suggested that two of the items required in the justification letter—explanations of why a committee is essential and why a committee’s function cannot be performed by other means—are contained in the two other submissions by the agencies. GSA said it is in the process of revising its regulations to eliminate redundant information and certifications among the advisory committee annual reports, consultation letters (which are the justification letters), and annual committee management plans, which are required by OMB and GSA to implement Executive Order 12838 and OMB Circular A-135. GSA suggested that as long as an item of information is contained in one of the required documents, it need not be in the others. It said that if these data items were removed from our analysis, the error rate, on the basis of the number of data elements found to be in error divided by the total number of data elements, would be 10.6 percent.

As previously stated, we do not believe that this would be a meaningful analysis because it is the justification letters that should be the unit of analysis and not the individual data elements. Further, the two items in the justification letter to which GSA referred are only required to be in the justification letter and, therefore, agencies might not include them in the other two reports. For example, the two items do not need to be included in the advisory committee annual reports if the committee is new—during fiscal year 1996, there were 52 new committees. Additionally, only the justification letters are submitted when the committees are established; the other two reports are submitted on an annual basis that does not necessarily coincide with the justification letter submissions by the agencies. It would also appear to be more efficient for GSA analysts reviewing the charters to be able to rely on the justification letters for all needed information, rather than having to retrieve other documents that may or may not include relevant information.

3. We deleted the section in the draft report that is referred to in these comments. GSA has corrected the underreporting of advisory committee members and costs, which we brought to their attention during the course of our work. The underreporting was also acknowledged by GSA at the November 5, 1997, hearing on FACA before the House Subcommittee on Government Management, Information, and Technology.

Occurrence of Required Items Missing in Charters and Justification Letters Submitted to GSA From October 1, 1996, to July 21, 1997

| Description of required item | Number of missing items |
|---|-------------------------|
| Items missing from 74 of 203 charters for discretionary and nondiscretionary committees | |
| Committee's official designation | 2 |
| Committee's objectives and scope of activities | 1 |
| Period of time necessary for committee to carry out its purpose | 33 |
| Agency or official to whom the committee reports | 6 |
| Agency responsible for providing the necessary committee support | 7 |
| Description of the committee's duties | 3 |
| Estimated annual operating costs and staff years | 21 |
| Estimated number and frequency of committee meetings | 5 |
| Committee's termination date, if less than 2 years | 0 |
| Date charter was filed | 7 |
| Total items missing | 85 |
| Items missing from 41 of 107 justification letters for discretionary committees | |
| Explanation of why committee is essential to the conduct of agency business and in the public interest | 26 |
| Explanation of why committee's functions cannot be performed by agency, an existing committee, or other means | 28 |
| Description of the agency's plan to attain fairly balanced membership | 34 |
| Total items missing | 88 |

Source: GAO analysis.

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