

May 2006

# U.S. COMMISSION ON CIVIL RIGHTS

## The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees





Highlights of [GAO-06-343](#), a report to congressional requesters

## Why GAO Did This Study

The Commission on Civil Rights (the Commission) and its 51 state advisory committees were established in 1957 to serve as independent entities charged with reporting on the status of civil rights in the nation. GAO was asked to assess (1) the adequacy of the Commission's policies for ensuring the quality of its reports and (2) the role of the state advisory committees.

## What GAO Recommends

GAO makes several recommendations designed to strengthen the quality of Commission reports and make better use of its state advisory committees. They include establishing policies for ensuring the quality of national office reports and briefings and improving accountability for the Commission's decisions on these products; establishing a requirement to ensure the timely renewal of state advisory committee charters; and establishing an external accountability mechanism such as seeking the services of an Inspector General.

The Commission did not comment on our conclusions or recommendations but instead described actions it has taken to improve its policies, processes, and operations. These actions, however, do not address our recommendations. One of the seven Commissioners agreed with our report and two disagreed.

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 To view the full product, including the scope and methodology, click on the link above. For more information, contact Bob Robertson at (202) 512-9889 or [robertsonr@gao.gov](mailto:robertsonr@gao.gov).

# U.S. COMMISSION ON CIVIL RIGHTS

## The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees

### What GAO Found

The Commission has some policies for ensuring the quality of its national office reports, briefings, and hearings. However, it lacks policies for ensuring that these products are objective and that the Commission is sufficiently accountable for the decisions made on these products. While the Commission's policies for its national office products call for legal and other reviews, and Commissioners have an increased role in the development of its products, as GAO previously recommended, the Commission's policies do not require that Commission reports, briefings, or hearings incorporate balanced, varied, and contrasting perspectives in order to ensure objectivity. Also, the Commission has no policy on the use of external reviewers of national office reports, such as a policy that would specify when external reviewers should be used and how to select them so as to obtain a broad representation of views. We also found that the Commission's leadership has lacked accountability for some of its reporting decisions. For example, in some cases, the leadership has not consulted with all Commissioners at key points in the development of its reports. This includes the development of the Commission's 2005 national report to the President and Congress, which was significantly refocused without obtaining the concurrence of all Commissioners. Finally, the Commission has not secured an external means of oversight to examine its reporting policies and monitor its practices.

The state advisory committees have played a key role in the Commission's mission by identifying and reporting on local civil rights issues, but most committees do not have current charters giving them authorization to operate and the Commission has not fully integrated the committees into the accomplishment of its mission. Since 1980, the state advisory committees have accounted for 200 of the 254 reports issued by the Commission. However, 38 of the 51 state advisory committees cannot function because their authorizing charters have expired. In recent years, the committees' operations have been limited by reduced funds for meetings and travel and reductions to regional office staff who provide the committees with essential operational support. Additionally, in our survey of the state advisory committees and interviews with committee members, they reported a lack of timely review by the Commission of reports they have developed. Furthermore, although the state advisory committees are considered the "eyes and ears" of the Commission, it has not incorporated the role or work of the committees into its strategic planning and decision-making processes. Finally, the Commission has not provided for independent oversight of its policies and practices for the state advisory committees.

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## Abbreviations

CBO	Congressional Budget Office
FACA	Federal Advisory Committee Act
GSA	General Services Administration

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United States Government Accountability Office  
Washington, DC 20548

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May 1, 2006

The Honorable Jim Sensenbrenner, Jr.  
Chairman  
Committee on the Judiciary  
House of Representatives

The Honorable Steve Chabot  
Chairman  
Subcommittee on the Constitution  
Committee on the Judiciary  
House of Representatives

The Honorable Orrin G. Hatch  
United States Senate

The U.S. Commission on Civil Rights (the Commission) was established by the Civil Rights Act of 1957 to serve as an independent, bipartisan, fact-finding agency whose mission is to investigate and report on the status of civil rights in the United States. Since its inception, the Commission has conducted hearings and issued reports highlighting critical, controversial civil rights issues, including racial segregation, impediments to voting rights, and affirmative action. To carry out its fact-finding and reporting mission, the Commission is required to submit at least one report annually to the President and Congress on federal civil rights enforcement efforts, among other requirements. Because the Commission has no enforcement power, the key means for achieving its mission lies in its credibility as an independent and impartial fact-finding and reporting organization. To complement this national fact-finding and reporting effort, separate state advisory committees were also authorized in 1957 to advise the Commission and serve as its “eyes and ears” on state and local civil rights issues. State advisory committees are composed of volunteers appointed by the Commission in every state who conduct public hearings on state and local civil rights issues and issue reports to the Commission on their findings. The Commission’s national office reports are researched and written by national office staff and approved by the Commissioners, and the state advisory committee reports are researched and drafted by the Commission’s regional office staff under the direction of the state advisory committees.

We were asked to assess the Commission’s quality assurance policies for its national and state advisory committee reports and other products and

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the role of the state advisory committees in fulfilling the Commission's fact-finding and reporting mission. More specifically, our objectives were to assess (1) the adequacy of the Commission's policies for ensuring the quality of its products and (2) the role of the state advisory committees in contributing to the Commission's work.

To address these objectives, we reviewed documents such as relevant statutes, regulations, and administrative policies of the Commission; transcripts and minutes of Commission meetings; and recent Commission and state advisory committee reports. We interviewed Commission staff, including the Staff Director, and three Commissioners—the Chair, one Republican member, and one Democrat. We also attended monthly meetings of the Commission, including briefings, during the period in which we conducted our work. To analyze the quality assurance policies for its products, we reviewed the Commission's administrative policies for its reports, briefings, and hearings. We also reviewed the policies used by the National Academies of Sciences (the Academies) and the Congressional Budget Office (CBO) to ensure the quality of their products and guidance from the Office of Management and Budget on ensuring the quality and objectivity of information disseminated by federal agencies, in addition to considering GAO's own policies. We also interviewed officials from the Academies and CBO. In addition, we reviewed the Commission's files for a selection of recent national and state advisory committee reports and interviewed national and regional office staff.

To analyze the state advisory committees' role in the Commission's fact-finding and reporting mission, we conducted a survey of the 51 state advisory committee chairs. We received responses to this survey from state advisory committee chairs and former chairs in 36 states. In addition, we conducted site visits to all six regional offices, where we interviewed regional staff to determine the support they provide to the state advisory committees. We also interviewed the state advisory committee chairs and members in 11 states to understand how they operate and their experiences with the Commission's national and regional offices. We interviewed officials at the General Services Administration (GSA), which provides guidelines for federal advisory committees, and reviewed the Federal Advisory Committee Act (FACA) and related documents. In addition, we reviewed the most recently approved state advisory committee charters, interviewed Commission officials who work with the regional offices, and reviewed state advisory committee regulations, policies, and other guidance. We conducted our work from April 2005 to March 2006 in accordance with generally accepted government auditing standards.

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## Results in Brief

The Commission has some policies that provide adequate quality assurance for its products; however, it lacks policies for ensuring the objectivity of its national office reports, briefings, and hearings and providing accountability for decisions made on its national office products. Among its key policies, the Commission requires its national office products to be reviewed for legal sufficiency and provides affected agencies an opportunity to comment on the accuracy of information in its draft reports. In addition, under new Commission policies, Commissioners have an increased role in the development of its products, as we previously recommended. However, the Commission lacks several key policies that could help ensure objectivity in its national office products. Specifically, the Commission does not have a policy requiring varied and opposing perspectives in its national office reports, briefings, or hearings. Similarly, the Commission does not have a policy for determining when to use external reviewers for its national office reports and how to select reviewers so that they can provide a variety of perspectives. The Commission also lacks accountability for the decisions made on its products. In some cases, the Commission has made decisions without fully consulting with the Commissioners or documenting its decisions. For example, the Staff Director did not consult with all the Commissioners or obtain their agreement before he significantly redirected the focus of its 2005 statutorily required national office report. In addition, although we found that the Commission has weaknesses in its policies for ensuring the objectivity of its products and accountability for the decisions made on these products, it has not provided for any external examination or monitoring of its policies or practices. Finally, the Commission's product quality policies for its state committees are more comprehensive than those for its national office policies, including, for example, the requirement that state advisory committees consider varied and opposing perspectives in conducting its work.

The state advisory committees have played a key role in the Commission's work by identifying and reporting on local civil rights issues, but most committees do not have current charters giving them authorization to operate, and the Commission has not fully integrated the committees into the accomplishment of its mission. Traditionally, the committees have gathered data on state and local civil rights issues by holding hearings, forums, and briefings and communicated their findings to the Commission and the public through reports. Since 1980, the state advisory committees have accounted for 200 of the 254 reports published by the Commission. Currently, however, 38 of the 51 state advisory committees cannot conduct any work because they do not have approved charters. In late 2005, the Commission began revising the criteria for state advisory committee

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membership in order to, among other things, move away from racially and ethnically based representation toward great diversity in expertise and ideas. It also decided that the committees' applications for new charters would not be accepted until they had been redrafted to include only members who meet the new criteria. Several other actions by the Commission have limited the activities of the state advisory committees. First, since the 1990s, because of budgetary constraints, the Commission has significantly reduced the number of regional office staff, who provide extensive support to the state committees in conducting their activities and producing reports. In addition, the Commission has reduced funding for the state advisory committees, including money needed to hold public meetings. Furthermore, draft reports prepared by the state advisory committees are often not reviewed or published by the Commission in a timely manner. For example, most of the state advisory committees we visited told us the national office had not reviewed and accepted their reports in a timely manner, and less than a quarter of the state advisory committee chairs who responded to our survey reported that they were satisfied with the national office's timeliness in processing their reports. The Commission has also not incorporated the work of the state advisory committees into its strategic planning and decision-making processes, including articulating how the national office will use the state advisory committees' findings on state and local civil rights issues to inform the Commission's national goals and strategies. For example, the Commission did not obtain input from the state advisory committees in developing its new draft strategic plan, although the committees play an important role in accomplishing the agency's goals. Finally, although many of these are long-standing issues, the Commission has not provided for independent oversight of its policies and practices for the state advisory committees.

We are making several recommendations intended to strengthen the Commission's product quality assurance policies, its accountability for the decisions made on these products, and its use of the state advisory committees. More specifically, we are recommending that the Commission develop policies designed to better ensure the quality of the Commission's national office products and to ensure that relevant information and perspectives are covered comprehensively during briefings and hearings. In addition, we are recommending that the Commission make the most effective use of the state advisory committees and that it establish an external accountability mechanism to ensure that the Commission's processes are well documented and its policies are followed.

We provided the U.S. Commission on Civil Rights with a draft of this report for review and comment. In its response, the Commission's Staff



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Director did not comment on our conclusions or recommendations but instead described actions taken to improve the Commission's management and financial controls, the operations of the state advisory committees, the role of the Commissioners, and internal review procedures for its reports and briefings. We had already discussed most of these actions in our report, and we added information on recent state advisory committee activities. However, while many of these actions are positive, they do not address the matters upon which we based our recommendations. We continue to believe that the actions described in our recommendations are needed to strengthen the Commission's products and make better use of its state advisory committees. The Staff Director's comments are summarized on pages 36 and 37 and reproduced in their entirety in appendix II.

Although we did not solicit comments from the Commissioners, the Staff Director provided them with an opportunity to respond to our draft report, and three of the seven Commissioners provided us with comments. One Commissioner agreed with the contents of the draft report. However, in a joint response, the Vice Chair and one Commissioner strongly disagreed with the draft report's approach, tone, and conclusions and asserted, among other things, that the report was biased and unbalanced. They also stated that the report did not sufficiently acknowledge the policy and other changes made by the Commission and that the previous leadership of the Commission was responsible for many of the issues discussed in our report. We have carefully reviewed the Commissioners' comments and continue to believe that our findings, conclusions, and recommendations are well grounded and that the report is balanced and unbiased. Their comments and our responses are summarized on pages 37 and 38. The written comments we received from the Commissioners are contained in appendixes III and IV.

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## Background

The U.S. Commission on Civil Rights was established to serve as an independent, bipartisan, fact-finding agency whose mission is to investigate and report on the status of civil rights in the United States. It is required to study the impact of federal civil rights laws and policies with regard to discrimination or denial of equal protection of the laws. According to its statutory mission, the Commission also serves as a national clearinghouse for information related to its mission and investigates charges of citizens being deprived of the right to vote because of color, race, religion, sex, age, disability, or national origin. For the purpose of carrying out its mission, the Commission may hold hearings and has the power to administer oaths, issue subpoenas for the attendance

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of witnesses and the production of written materials, take depositions, and use written interrogatories to obtain information about matters that are the subject of a Commission hearing or report. However, because the Commission lacks enforcement powers that would enable it to apply remedies in individual cases, the Commission refers specific complaints to the appropriate federal, state, or local government agency for action.<sup>1</sup> Its operations are also governed by the provisions of the Sunshine Act, which requires the Commission to open most of its meetings to the public.<sup>2</sup>

By statute, the structure of the Commission has three key components—the Commissioners, the Staff Director, and the state advisory committees:

- The Commission is directed by eight part-time Commissioners who serve 6-year staggered terms. Four Commissioners are appointed by the President, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. With the concurrence of a majority of the Commission’s members, the President also designates a Chairperson and Vice Chairperson from among the Commissioners. No more than four Commissioners can be of the same political party.<sup>3</sup>
- The Staff Director is appointed by the President with the concurrence of a majority of the Commissioners. A full-time employee, the Staff Director serves as the administrative head of the Commission. All Commission offices and senior staff report directly to the Staff Director.
- The Commission has established 51 state advisory committees composed of private citizens appointed by the Commission who volunteer to assist

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<sup>1</sup>Several agencies have enforcement authority for civil rights issues. For example, the Equal Employment Opportunity Commission is charged with enforcing specific federal employment antidiscrimination statutes. The Civil Rights Division of the Department of Justice also enforces federal statutes prohibiting discrimination on the basis of race, sex, disability, religion, and national origin.

<sup>2</sup>In general, the Government in the Sunshine Act, 5 U.S.C. 552b (2000), requires collegial bodies composed of two or more individual members to conduct and dispose of agency business at meetings which have been announced in advance, for which an agenda has been published and at which the public may attend and observe. Some meetings can be closed if they meet specific statutory requirements.

<sup>3</sup>As of March 2006, the Commission members included four Republicans, one Independent, and two Democrats. One position was vacant. In recent years, several Commissioners have changed their party affiliation during their tenures. For example, one Commissioner was appointed to the Commission as a Republican in 2001 but changed her party affiliation to Independent in December 2004.

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the agency by identifying local civil rights issues, some of which may become important at the national level. Each committee has a minimum of 11 members. The state advisory committees are supported by six regional offices whose primary function is to assist the state committees in their planning, fact-finding, and reporting activities.

The Commission's annual appropriation has averaged about \$9 million for more than 10 years, with salaries and benefits constituting about 73 percent. Because of level funding since fiscal year 1995, the total number of full-time equivalent employees steadily declined from 95 in fiscal year 1995 to 64 in fiscal year 2004. As of January 1, 2006, the number of staff had further declined to 46 full-time staff nationwide, excluding the Commissioners; 9 of the 46 staff were professionals in regional offices.

After December 2004, when a new Chair, Commissioner, and Staff Director were appointed, the Commission began to reevaluate its product development policies and matters related to the operations of its state advisory committees.

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## Commission Products

Because the Commission has no enforcement authority, the "force of its work derives from its scholarly reports."<sup>4</sup> The Commission's work was intended from the outset to be "objective and free from partisanship . . . broad and at the same time thorough," as the Attorney General noted when he transmitted the legislative proposal that established the Commission—the Civil Rights Act of 1957.<sup>5</sup> The primary written product produced by the Commission's national office is a statutorily required annual report on federal civil rights enforcement efforts. This statutory report, which is transmitted to the President and Congress, contains findings, conclusions, and recommendations and is published by the national office. In addition, the national office produces other studies, such as reports on federal funding for civil rights programs and letters to agencies or members of Congress on civil rights issues. The Commission also invites speakers, such as attorneys and scholars, to brief the Commissioners on civil rights issues upon request at the Commission's

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<sup>4</sup>H.R. Rep. No. 775 103rd Cong., 2d Sess., 4 (1994).

<sup>5</sup>Letter from Herbert Brownell, Jr. to the Speaker of the House of Representatives, April 9, 1956, reprinted in H.R. Rep. No. 29, 85th Cong., 1st Sess. 13 (1957). In our report, "objectivity" means expressing facts or conditions as perceived without distortion by personal feelings, prejudices, or interpretations. Synonyms include "fairness," "impartiality," and "independence."

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regular (generally, monthly) public meetings. Such briefings can also serve as the basis for Commission reports that include the speakers' written statements. The Commission has also conducted public hearings with witnesses as part of its investigative and fact-finding mission. The Commission's professional staff researches and writes its national office reports and organizes Commission briefings and fact-finding hearings.

In addition to the Commission's national office products, the state advisory committees produce written reports that are based on fact-finding hearings and other public meetings. State advisory committee members propose civil rights topics for study, participate in state and local hearings and public meetings that they sponsor, review draft reports, and vote to approve state advisory committee reports to be sent to the Commission. Fact-finding reports may contain findings, conclusions, and recommendations for action. State advisory committees also issue reports that summarize speakers' presentations at conferences and public hearings held by the committee. The Commission's regional staff provide support to the state committees by organizing and attending their meetings, hearings, and other public events, and by researching and drafting reports for the committees.

The Staff Director and Commissioners play key roles in approving the Commission's products. The Staff Director is responsible, among other duties, for approving all national office project proposals, project designs, and draft products before they are forwarded to the Commissioners for review. The Staff Director also approves all state advisory committee activities, project proposals, and reports. Commissioners vote to approve national office products at key stages, such as project proposals and final drafts, and they also receive all state advisory committee final reports but do not vote to accept or reject them.

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## Quality Assurance Policies

The Commission's quality assurance policies for its national office and state advisory committee products are set forth in its *Administrative Manual*,<sup>6</sup> *Legal Sufficiency* and *Defame and Degrade Manual*, and *Hearing Manual*. In addition, the Commission's quality assurance policies for its state advisory committee products are set forth in the Commission's

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<sup>6</sup>This manual contains the Commission's administrative instructions and policies for many of its day-to-day operations. Hereafter, we refer to the *Administrative Manual* as the Commission's policy manual.

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*State Advisory Committee Handbook*, published by the Commission in February 1998. The Commission's policies for its state advisory committees provide guidance for developing and approving project proposals and reports and conducting fact-finding hearings and public meetings. Some of the Commission's regional offices also have issued memorandums and other documents on policies affecting their products. (See apps. V and VI for further information on the Commission's policies and processes for developing and approving national office and state advisory committee products.)

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**State Advisory Committees** The Commission's state advisory committees were established to function as the "eyes and ears" of the Commission on civil rights issues. The Commission's statute authorizes the creation of advisory committees and directs the Commission to establish at least one advisory committee in every state and the District of Columbia. Each state committee has a charter that enables it to operate and identifies its members. Each charter is valid for a term of 2 years, and the committee terminates if the charter is not renewed at the end of the term.<sup>7</sup> The Commission is responsible for renewing state advisory committee charters.

The mission of the state advisory committees is to investigate within their states any subject that the Commission itself is authorized to investigate and provide advice to the Commission in writing about their findings and recommendations. The committees must confine their studies to the state covered by their charters. They are not limited to subjects chosen by the Commission for their study but may study any subjects within the purview of the Commission's statute. More specifically, the state advisory committees advise the Commission about (1) any alleged denials of the right to vote due to discrimination or fraud, (2) any matters related to discrimination or denial of equal protection of the law and the effect federal laws and policies have with respect to equal protection of the laws, and (3) any matters of mutual concern in the preparation of reports of the Commission to the President and Congress. Advisory committees are also charged to receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to advisory committee inquiries; assist the Commission

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<sup>7</sup>The Commission recently asked Congress to change the term of each state advisory committee from 2 years to 4 years but as of February 2006, this change had not been made. FACA limits charters to 2 years and provides other operating parameters for advisory committees. See 5 U.S.C. App. 1-16 (2000).

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in the exercise of its clearinghouse function; and, attend, as observers, any open hearing or conference that the Commission may hold within their state.

To carry out their mission to gather information and to advise the Commission on state and local civil rights issues, state advisory committees are authorized to hold fact-finding meetings and invite government officials and private persons to provide information and their views on various subjects. Advisory committee meetings are open to the public, and a designated federal employee must be present at all meetings. Any person may submit a written statement at any business or fact-finding meeting of an advisory committee and, at the discretion of the designated federal employee, may make an oral presentation.

The Commission's relations with its state advisory committees are guided and regulated by FACA. Enacted in 1972, FACA prescribes certain ground rules that govern all federal advisory committees, including the Commission's 51 advisory committees. Under the act, GSA established a Committee Management Secretariat, which is tasked with prescribing administrative guidelines and management controls for advisory committees and providing advice, assistance, and guidance to advisory committees to improve their performance. In turn, FACA requires each agency head to establish uniform administrative guidelines and management controls for its advisory committees that are consistent with the Secretariat's directives. Under FACA, advisory committees are to have a balanced representation of views and adequate funding and support, and to exercise independent judgment without inappropriate influence from the appointing agency or any other party.<sup>8</sup>

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## The Commission Lacks Policies for Ensuring Objectivity or Providing Accountability for Its Products

The Commission has some policies designed to ensure the quality of its products. However, it does not have policies for ensuring an objective examination of the issues or ensuring accountability for the decisions made on its products. The Commission's policies for developing and approving its products do not contain criteria to be used by the Staff Director or Commissioners and do not provide for the representation of diverse perspectives or the use of experts as external reviewers. In addition, the Commission's policies do not provide transparency for the decisions made in regard to its national office products, and the

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<sup>8</sup>5 U.S.C. App. 5(b) and (c) (2000).

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Commission has not obtained the services of an Inspector General, as we previously recommended, to strengthen its accountability. In contrast, the Commission’s policies for its state advisory committees are more comprehensive than those for its national office.

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### Although the Commission Has Policies That Provide Some Safeguards, It Lacks Policies Designed to Ensure the Objectivity of Its National Office Products

The Commission has policies for developing and approving its national office products—reports, briefings, and hearings—that provide some safeguards for the quality of these products, but it lacks policies for ensuring their objectivity. More specifically, the Commission does not have a policy requiring the inclusion of balanced and varied perspectives in its national office reports, briefings, and hearings, nor does it have a policy on the use of external reviewers. In addition, although the Commission requires the Staff Director and Commissioners to approve its national office products at key junctures in their development, its policies do not include criteria for their assessment of these products.

### Commission Policies Provide General Criteria for Ensuring Quality

The Commission’s policies on the quality of its national office products are fairly general, requiring the reports to be accurate, well written, and timely. For example, it is Commission policy to issue “well-written documents that meet high standards of accuracy and timeliness,” according to the Commission’s policy manual. Similarly, the offices that develop Commission products are responsible for ensuring that the draft report is “well written, accurate, and of high quality” before the report is published, and staff must “double-check sources” in draft reports “for accuracy and conformance with the appropriate rules of citation.” In addition to these general policies, the Commission requires four independent reviews of draft reports primarily designed to ensure their accuracy: (1) an editorial review;<sup>9</sup> (2) a legal sufficiency review; (3) a “defame and degrade” review to ensure that, if reports cast aspersions on any persons named in them, those persons will be offered an opportunity to respond; and (4) if needed, a review by agencies affected by the report. (See app. V for further information on the Commission’s policies and processes for developing and approving national office products.)

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<sup>9</sup>The purpose of the editorial review is to determine the adequacy and accuracy of the substantive information in the draft document, according to the policy manual. However, Commission officials we interviewed generally agreed that editorial reviewers tended to focus on issues such as grammatical correctness, inconsistencies, and clarity, rather than on substantive issues such as the adequacy of evidence.

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The Staff Director and Commissioners exercise considerable control in carrying out these policies. The Staff Director plays a pivotal role in approving all interim documents, such as proposals, outlines, discovery plans, and draft reports, throughout their development.<sup>10</sup> The Staff Director must approve all documents before they can be sent to the Commissioners for approval. Under new policies effective in May 2005, the Commissioners are required to approve Commission products at all key stages, from proposal development through final report stages, and their approval requires a majority vote. If there are any significant changes to a product at any stage, the Staff Director and Commissioners are required to approve these changes as well. This change marks a significant improvement over previous Commission policy, in which the Commissioners had limited involvement in the development of its products.<sup>11</sup> The previously limited role was a source of considerable concern to some Commissioners and led to our 2003 recommendation that the Commission provide for increased involvement of the Commissioners in planning and implementation.<sup>12</sup>

The Commission has issued four reports and conducted several briefings under the new policy requiring greater Commissioner involvement.<sup>13</sup> Two of these reports were based on briefings made to the Commissioners. From July 2005 to February 2006, the Commission conducted five briefings with invited speakers presenting their perspectives on specific civil rights issues, such as the reauthorization of expiring provisions of the Voting Rights Act and racial disparity studies. The papers that speakers submitted for these briefings provide the basis for briefing reports published by the Commission.

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<sup>10</sup>A discovery plan describes the methods to be used to obtain the information needed to develop a product, such as issuing subpoenas for hearings, document requests, and interrogatories—formal questions sent to federal agencies, and nongovernmental organizations when appropriate, that require a written response and documentation.

<sup>11</sup>Under previous policy, Commissioners could approve proposals and design summaries at the beginning of product development and vote to approve final reports at the end, but did not otherwise play an active role in product development.

<sup>12</sup>See GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#) (Washington, D.C.: Oct. 31, 2003).

<sup>13</sup>U.S. Commission on Civil Rights: *Federal Procurement after Adarand* (Washington, D.C.: Sept. 2005); *Funding Federal Civil Rights Enforcement: The President's 2006 Request* (Washington, D.C.: Oct. 2005); *The Economic Stagnation of the Black Middle Class* (Washington, D.C.: Dec. 2005); and *Reauthorization of the Temporary Provisions of the Voting Rights Act* (Washington, D.C.: Feb. 2006).



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The Commission Lacks Policies for Ensuring the Objectivity of National Office Products

The Commission does not have a policy requiring the representation of varied perspectives in its national office reports, in contrast to its policies for state advisory committee reports, which are required to “represent a variety of different and opposing views.”<sup>14</sup> For example, the initial draft of the Commission’s 2005 report, *Federal Procurement after Adarand* (the Adarand report)—the most significant report recently issued by the Commission because it was the statutorily required annual report—reflected a range of research and perspectives on a controversial issue involving the application of racial considerations in federal contracting.<sup>15</sup> The Commissioners had agreed upon this range of perspectives when they voted to approve the report’s outline in April 2005. However, in response to comments from a few Commissioners, the Staff Director removed major sections of the report that supported one perspective, that “race conscious” strategies are still needed to increase minority businesses’ participation in federal contracts.<sup>16</sup> As a result, the main text of the final

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<sup>14</sup>Including dissenting statements by Commissioners in reports is one of the avenues available for broadening a national office report to include varied perspectives. Such statements are now provided for under a new policy that the Commission approved in May 2005. However, in practice, relying upon dissenting statements can be problematic because it places the burden on the dissenting Commissioners to obtain and analyze data and write the dissents without necessarily having support from the Commission staff. The process also assumes that Commissioners who wish to write dissents will be given access to data and adequate time to write their statements. Similarly, although members of state advisory committees can submit dissenting statements, the Commission’s new policy for these committees, approved in February 2006, limits these statements to no more than one page.

<sup>15</sup>The title of this report refers to the Supreme Court’s 1995 decision, *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), which addressed the use of set-asides for small and disadvantaged businesses in federal contracts. Prior to the decision, federal contracting agencies operated under the presumption that businesses owned by members of racial minority groups were disadvantaged and entitled to preference in awarding federal contracts. The Supreme Court opinion held that government benefit programs that use racial criteria must serve a compelling government interest and be narrowly tailored in order to be constitutional. The Supreme Court returned the case to the U.S. Court of Appeals in Colorado to decide whether the compelling interest and narrow tailoring were present in the case of the construction contracts questioned by the petitioner Adarand. To determine whether the program was narrowly tailored, the Supreme Court suggested that the Court of Appeals should inquire, among other things, “whether there was ‘any consideration of the use of race-neutral means to increase minority business participation’ in government contracting...” 515 U.S. at 237-238.

<sup>16</sup>Programs that provide economic benefits to overcome the effects of past discrimination are said to be “race neutral” if criteria such as social or economic disadvantage are used to determine the availability of the economic benefit. They are said to be “race conscious” if race or ethnic characteristics are used to determine the availability of the economic benefit. Programs that use affirmative action to increase minority participation are generally categorized as race conscious.

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published report reflected only one point of view, that federal agencies have not sufficiently developed “race neutral” approaches to increase the participation of small and disadvantaged businesses in federal contracting.<sup>17</sup>

We also found that the Commission does not have a policy for determining when to use external reviewers and how reviewers should be selected for its national office reports. For example, for the Commission’s 2005 Adarand report on affirmative action in federal contracting, the Staff Director hired a single reviewer whose work is cited in the report and who is widely known for his opposition to affirmative action. The contractor’s functions were to review the draft report and provide his “opinions, revisions, comments and suggestions,” based on his expertise in federal contracting and race-neutral alternatives. Some of the Commissioners and the staff responsible for preparing the report said that they did not know that an external reviewer had been hired, how he had been selected, what changes the reviewer had recommended, or which changes were included in the final report. Agency staff noted that the external reviewer added some material to the report that critiqued the work of a federal agency and that the Commission did not provide the agency with an opportunity to comment, as required by Commission policy. In addition, the Commission did not acknowledge the external reviewer’s participation in the published report.

Although the Commission does not have a policy on using external reviewers, other nationally recognized research organizations, such as the National Academies and the Congressional Budget Office, use external reviewers to assess the completeness, balance, and objectivity of their reports.<sup>18</sup> For both the Academies and CBO, the general principle is that the more controversial the topic, the greater the number of reviewers they use. The Academies’ extensive external review process includes preparing a slate of names of possible reviewers, having the names approved at two levels of the organization, and establishing a review coordinator. The

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<sup>17</sup>The deleted material was the subject of the dissenting statement written by one Commissioner, who included the deleted material as an appendix to his dissent.

<sup>18</sup>The National Academies is a nongovernmental institution that enlists scientists, health professionals, and other experts to provide the government and others with independent, unpaid advice on scientific and other issues that have public policy implications. CBO is a nonpartisan, independent congressional agency that prepares reports for Congress on budget-related information, including cost estimates for bills, budget and economic projections, and analyses of the President’s budget each year.

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Academies then recruit independent experts with a range of views and perspectives to comment on the draft report, and their comments are provided anonymously. In addition, to ensure that the reviewers' comments are appropriately incorporated, the Academies require the review coordinator to document that the report adequately addressed the reviewers' comments. Similarly, CBO uses external reviewers from the academic community and other agencies in order to obtain a wider range of views and twice yearly draws on the advice of a panel of experts to review and comment on the agency's preliminary economic forecasts.

Although briefings and briefing reports are becoming increasingly frequent Commission products, the Commission does not have a policy specifying how speakers for the briefings are to be identified or requiring that briefing panels be balanced and include a variety of perspectives.<sup>19</sup> For example, the Commission held a briefing in October 2005 to discuss expiring provisions of the Voting Rights Act of 1965, a controversial topic of immediate interest. Three of the four speakers at the Commission briefing opposed reauthorization of a key provision of the act. One Commissioner we interviewed told us he thought the briefing panel was biased and unbalanced.<sup>20</sup> According to the Staff Director, the way speakers are identified and the basis for their selection vary with each briefing, depending on the topic, but the Commission does not have a written requirement for ensuring varied perspectives in briefing panels.<sup>21</sup> Some invited speakers have declined to participate in Commission briefings because they were unavailable on the proposed briefing dates or because they believed their professional roles precluded them from taking a stance

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<sup>19</sup>In August 2005, the Commission voted to conduct briefings during nearly all of its monthly meetings and publish briefing reports based on them rather than issuing national office reports not required by its statute. If briefing reports are issued for all briefings conducted, as planned, this would be an increase in the number of products issued by its national office. From July 2005 to February 2006, the Commission held five briefings and issued two briefing reports.

<sup>20</sup>According to the Commission's new policies, Commissioners must approve briefing topics and the panel of speakers for briefings at a monthly Commission meeting at least 1 month in advance of the briefing itself. In addition, in order to hold a hearing, a majority of the Commission or a majority of the members present at a meeting with a quorum must vote to approve the hearing.

<sup>21</sup>Regarding hearings, as opposed to briefings, the Commission also lacks a policy specifying how witnesses for hearings are to be identified or requiring the inclusion of a variety of perspectives in its hearings. A Commission official told us that the witness panel as a whole should be balanced, although the Commission does not have a written policy to this effect. The Commission has not conducted hearings since 2002.

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on the issues to be discussed. However, the Staff Director also told us that the Commission often has difficulty obtaining speakers who represent different perspectives on controversial topics.<sup>22</sup> For example, in one instance an invited speaker declined in part because he had no confidence in the Commission's receptivity to the evidence and other points of view.

In addition, although the Commission's new policies require the Staff Director and Commissioners to approve national office products at several stages, these policies do not include criteria designed to ensure that the products are objective. The Staff Director's and Commissioners' decisions to review and approve each stage of a product's development—such as proposal, outline and methodology, discovery plan, and draft report—are not guided by written criteria, such as requiring reviewers to assess whether the methodology provides sufficient and relevant evidence to achieve the product's objectives. According to the Staff Director, in addition to the Commission's general policy guidance, his reviews of draft reports are largely guided by his judgment on whether the reports are likely to be approved by a majority of the Commissioners. The Staff Director made a similar point at a July 2005 public meeting, stating that several Commissioners had indicated that they would dissent from a draft report, and that his goal in removing chapters from the final report was to ensure that a majority of the Commissioners would vote to approve it.

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### Commission Policies Do Not Provide Accountability for Decisions Made on Its Products

The Commission does not use some checks and balances to ensure Commissioner involvement and its policies do not provide transparency for the decisions made in regard to its products, and the Commission has not obtained the services of an Inspector General to strengthen its accountability, as we previously recommended.

### Some Product Decisions Are Made without Consulting All Commissioners

The Commission does not use some of the checks and balances needed to provide accountability for the decisions made on its products. Although its new policies involve the Commissioners far more extensively in decisions on its products than in the past, the Commission still does not routinely include all Commissioners in its deliberations as required. This problem predates the Commission's new policies. For example, our 2003 report noted the complaints of several Commissioners that they were often

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<sup>22</sup>The Staff Director also noted that the Commission does not pay speakers.

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unaware of the content of Commission products until they were published or released to the public.<sup>23</sup>

This pattern of not including all Commissioners in its deliberations was especially evident with regard to the decisions made on the Adarand report. For example, in an early stage of the development of this report, the Staff Director did not consult with all of the Commissioners or obtain their agreement before he changed the focus of the questions used to collect essential data from federal agencies for the report. These questions—called interrogatories—significantly altered the report’s direction after the Commission’s staff had completed much of their research. However, the Commissioners were not made aware of this change until a Commissioner pointed out discrepancies between the original focus as approved by the Commission in 2003 and the interrogatories that went out in 2005. At a public meeting of the Commission, three Commissioners objected to the fact that the interrogatories had gone forward without the expressed authority of the Commissioners and that these changes were made autonomously by the Staff Director and the Chair. At the meeting, the Chair agreed that the interrogatories should not have been sent without the other Commissioners’ approval of the changes.

In another example of decisions being made without the knowledge of all of the Commissioners, the Chair made changes to a draft briefing report on campus anti-Semitism based on his legal interpretation of an issue and private conversations with officials from the Department of Education. At the Commission’s February 2006 meeting, the Vice Chair said that she did not understand the rationale for the changes and objected to the methods used to obtain information on the issue. Other Commissioners questioned the Chair’s legal interpretation and the accuracy of the changes he made. Although they had planned to vote on the report at this meeting, the Commissioners postponed the vote because of disagreements about these changes and their implications for the report’s recommendations.

Similarly, the Chair and several Commissioners sent a letter to the Secretary of the Department of Education (Education) disagreeing with a civil rights organization’s report that had criticized the department and

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<sup>23</sup>See GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#) (Washington, D.C.: Oct. 31, 2003).

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commending Education for its commitment to civil rights.<sup>24</sup> However, the Commissioner, who, at that time, was the sole Democrat,<sup>25</sup> noted in a separate dissenting letter that he was not informed about the majority's letter until after it was drafted and that he did not understand the other Commissioners' impetus for writing the letter.<sup>26</sup>

In several recent instances, Commissioners have also complained about not receiving key documents for review or receiving them too late to help them in their deliberations. For example, at the Commission's monthly public meeting in January 2006, several Commissioners complained that they had not received transcripts of Commission meetings since October 2005. Among other things, the transcripts contained information on a briefing that Commission staff had used to draft a briefing report on reauthorization of the Voting Rights Act. However, because the Commissioners had not received copies of the transcript used to prepare this report, they postponed a vote to approve the report for publication. In addition, the Commissioners postponed a vote accepting a state advisory committee report for publication because they had not received it in time to review it. Similarly, in July 2005, the Commissioners were sent a final draft of the Adarand report for review on the same day that they voted on its publication, despite the fact that it contained comments from an affected federal agency and an external reviewer that required fresh review. In addition, the Commissioner who was the sole Democrat at that time said that he did not receive additional changes to the report that were sent to all of the other Commissioners.

### The Commission Has Not Documented Key Decisions on Its Products

The Commission's decisions on the content of its products lack transparency because, in some cases, they are not discussed publicly or documented. For example, there was no documentation of the basis for the Staff Director's decision to remove several sections of the Adarand report in response to comments received from several Commissioners

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<sup>24</sup>Letter from Chairman Reynolds, Vice Chair Thernstrom, and Commissioners Braceras, Kirsanow, and Taylor to the Secretary of Education, Margaret Spellings (July 5, 2005). See <http://www.usccr.gov>. The report referred to in the Commission's letters, written by the NAACP Legal Defense and Educational Fund, is entitled, "Closing the Gap: Moving from Rhetoric to Reality in Opening Doors to Higher Education for African-American Students," (June 23, 2005). See <http://www.naacpldf.org/landing.aspx?sub=52>.

<sup>25</sup>As of July 2005, the Commission had one Democratic Commissioner. A second Democrat was appointed in October 2005.

<sup>26</sup>Letter from Commissioner Yaki to the Secretary of Education, Margaret Spellings (July 6, 2005). See <http://www.usccr.gov>.

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during their initial review of the draft report. In addition, in accordance with the Commission's new policies, the Commissioners' individual reviews of the draft report were not discussed in a public meeting.<sup>27</sup> Two Commissioners said that they were unaware of the changes made to the report until after the decision had been made to remove the sections of the report from the draft. In a public meeting afterward, the Staff Director stated that he had removed the sections because it had become clear to him that with these sections, the report would not receive enough votes to be approved for publication. One Republican Commissioner told us that although he agreed with the analysis in the Adarand report, he had abstained from voting on the final report because he objected to the report process and because he did not want a biased report to be issued by the Commission.

Another means of documenting the quality of products is the use of checklists. Although the Commission does not have checklists for assessing the quality of its national office reports, it does have such checklists for assessing the quality of state advisory committee reports. The checklists include a section to be completed by the Office of the Staff Director that documents the office's assessment of the balance, writing, and report conclusions of state advisory committee reports before transmitting these reports to the Commissioners. However, the Commission does not appear to use the checklists for state advisory committee reports, since they were not always completed or were missing. For example, although we requested copies of the completed checklists for nine state advisory committee reports issued since 2002, the Commission could not provide us with copies of any completed checklists.

Finally, the Commission has not obtained independent oversight, as we recommended in 2004 to address long-standing concerns about its

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<sup>27</sup>Two review stages, including review of draft reports, do not require Commissioners' vote to occur in a public meeting, where the discussion and decisions would be transcribed. The Commission's new policies allow Commissioners to approve each stage of a product's development outside of public meetings in writing by means of a process called "notational voting." Notational voting is a procedure used to consider and act on agency business without holding a formal meeting. Written proposals are circulated among the Commissioners and they vote by fax or mail; no public deliberations on the issues are held. However, if any Commissioner decides that an issue requires public deliberation, the notational vote is canceled and the issue is discussed at the Commission's next public meeting.

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management and accountability.<sup>28</sup> Specifically, we recommended that the Commission seek the services of an existing Inspector General to help keep the Commission and Congress informed of problems and to conduct and supervise necessary audits and investigations of the Commission's operations. In 2005, the Commission acted to implement our 2003 recommendation to increase Commissioners' involvement in the development of its national office products and also began to implement our recommendations on other matters, such as financial management. According to the Staff Director, he contacted officials from some Offices of Inspectors General, including GSA, but they declined to provide their services, noting that most of the Commission's problems would take too much of their staff time. The Staff Director also told us that the Commission had contracted with an accounting firm for advice on how to correct problems identified in their recent financial audit. This action, however, will not address the weaknesses we identified in the Commission's policies, or provide reasonable assurance of the objectivity of its products and accountability for the decisions made on these products.

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### Commission Policies for State Advisory Committee Products Are More Comprehensive than Those for Its National Office Products

For state advisory committee products, which are researched and written principally by the Commission's regional office staff, the Commission has quality assurance policies that are generally more comprehensive than its policies for its national office products. More specifically, Commission policy explicitly requires state advisory committees to incorporate balanced, varied, and opposing perspectives in their hearings and reports, in contrast to national office products, which do not have such a requirement. According to the Commission's administrative policy manual, state advisory committees "must seek to hear a variety of points of view and opinions" in conducting their work. This policy also notes that "balance does not mean that the conclusions of a State Advisory Committee agree with or include all positions, only that the research and opinions listened to represent a variety of different and opposing views on the topic at hand." To reinforce this focus, the checklist for transmitting state advisory committee proposals to the national office for approval asks the Staff Director's office to determine whether the sources to be used represent a variety of opinions on the issues. Similarly, the checklist for transmitting state advisory committee reports to the national office

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<sup>28</sup>See GAO, *U.S. Commission on Civil Rights: Management Could Benefit from Improved Strategic Planning and Increased Oversight*, [GAO-05-77](#) (Washington, D.C.: Oct. 8, 2004).



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requires the Office of the Staff Director to determine whether varied and opposing views were identified and discussed in the report. The national office does not have such quality assurance checklists for assessing its own products. In addition, state advisory committee members are required to review draft committee reports for their clarity, substance, objectivity, and conclusions, unlike Commissioners, who do not have criteria for reviewing Commission products. The regional directors are also responsible for ensuring that state advisory committee reports meet appropriate methodological, organizational, and balance standards. State advisory committee products are also subject to the four reviews required for all Commission products: the editorial review, legal sufficiency review, defame and degrade review, and affected agency review. (See app. VI for further details on the process for approving state advisory committee reports.)

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## State Advisory Committees Have Played a Key Role in the Commission's Work, but Most of Their Operations Have Been Suspended

The state advisory committees have played a key role in accomplishing the work of the Commission, but most committees cannot currently conduct any work because the Commission has not renewed their charters. The Commission has also instituted new membership criteria for the committees and has required all of the committees whose charters have expired to redraft their applications for renewal to comply with the new criteria. Furthermore, over the past 5 years, the activities of the state advisory committees have been significantly limited, in part because the Commission, working under budget restraints, has reduced the resources available to conduct their work and also because it has delayed reviewing and accepting their reports for publication. In addition, the Commission has not sought the views of state advisory committee members in its strategic planning process or on key decisions that affect the committees. Finally, although many of these are long-standing issues, the Commission has not provided for independent oversight of its policies and practices for state advisory committees.

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## State Advisory Committees Have Identified, Examined, and Publicized Many Local Civil Rights Issues

The Commission's state advisory committees have operated as a unique national network intended to provide the Commission with information on local civil rights issues that can be used in its work at the national level. The state advisory committees have identified and examined issues through a variety of activities and provided information to the Commission and the public in written reports. Since 1980, the state advisory committee issued 200 of the 254 reports published by the Commission. Other activities conducted by the state advisory committees include open forums, public meetings, and formal hearings that have provided avenues

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for the public to communicate their civil rights experiences and for the committees to define current local civil rights issues that may not yet be on the national agenda.

Some of the committees' reports have prompted action by the Commission. For example, in 1973, the California State Advisory Committee held hearings on the concerns of the Asian American and Pacific Islander communities. These hearings resulted in two state advisory committee reports: *Asian American and Pacific Peoples: A Case of Mistaken Identity* (February 1975) and *A Dream Unfulfilled: Korean and Philipino Health Professionals in California* (May 1975). These reports were the first studies conducted by the Commission on these issues, according to agency officials. The Commission issued national office reports on these issues in 1986, 1988, and 1992. More recently, after the terrorist attack on September 11, 2001, the Commission asked the state advisory committees to gather information on the status of Muslim, Arab American, and others perceived to be from these communities in their states. Twenty state committees held information-gathering events—such as town hall meetings—at which the public was invited to speak about experiences that may have threatened the civil rights of members of the Muslim community. As a result, nine state advisory committees' reports were issued by the Commission on the civil rights of Muslims and other communities in their states, and the Commission issued a statement that summarized the results of these activities and reports.<sup>29</sup>

State advisory committee reports also have had an impact on their states' operations, including state legislation. Members of several committees told us about legislation that had passed or state offices that had been affected through their efforts. For example, officials with one of the Commission's regional offices told us that in 2003, one of its states formed a multi-agency state task force to work on an issue reported by the Nevada State Advisory Committee on the educational opportunities of Native American Indian students in the state's public schools. As a result of the task force's efforts, the state enacted legislation designed to improve educational outcomes of Native American Indian students. State advisory committee members also noted that just conducting activities, without issuing a report, can have an effect. For example, members of one committee told us that they visited a local prison after receiving allegations of sexual abuse of female detainees

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<sup>29</sup>U.S. Commission on Civil Rights, *Anniversary Update on Commission Activities Related to September 11* (Washington, D.C.: Sept. 2002).

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being held on account of their illegal entry into the United States. Local newspapers were present during the committee's visits, bringing the issue, which was not well known, to the public's attention.

In addition, state advisory committee members reported that they participated in activities that gave them a voice in their states' civil rights operations. For example, they reported working with the state civil rights offices to inform them of local issues and assist in writing proposed legislation, giving testimony to state legislatures, and training state and local officials on current civil rights issues. In responding to our survey, one chairman reported that on the basis of work conducted by the state advisory committee, he testified before his state's Joint House and Senate Committee on several minority issues, including racial harassment in schools and discrimination in hiring. Another advisory committee chair wrote that following a report the committee issued on hiring practices and appointments to state commissions and boards, the governor committed to improving state practices and asked the committee for assistance in identifying minorities to serve on state boards and commissions.

State advisory committee members also reported being well connected to their local communities because of their professions. Those we interviewed included a state legislator, several university professors and lawyers, a director of a county Equal Employment Opportunity Commission office, the administrator of the regional office of a federal agency, and a church minister—roles that allowed them to influence civil rights issues in their communities. (See appendix VII for a summary of the profiles of state advisory committee members as listed in their most recently approved charters. To view the details by state of all 51 committee membership profiles, see an electronic supplement at <http://www.gao.gov/cgi-bin/getrpt?GAO-06-551SP>.)

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### Most State Advisory Committee Activities Have Been Suspended Pending Renewal of the Committees' Charters

Consistent with the requirements in FACA, state advisory committees that do not have an approved charter cannot meet or conduct any business. However, as of February 2006, 38 of the 51 state advisory committees did not have an approved charter, and 13 of them had not had an approved charter for at least 2 years. Only 13 state advisory committees currently have approved charters as of February 2006, and their charters are due to expire late in 2006. (See table 1.)

**Table 1: Charter Expiration Dates for State Advisory Committees, as of February 2006**

Year of charter expiration	Number of states	States
2003	13	CA, DE, IO, MI, MS, MO, NJ, NC, PA, SC, UT, WI, WY
2004	23	AL, AZ, AR, DC, FL, GA, ID, IL, IN, KS, KY, LA, MD, MA, NE, NE, NY, OK, OR, TN, TX, VA, WV
2005	2	CT, MN
<b>Subtotal—number of states without approved charters</b>	<b>38</b>	
2006 <sup>a</sup>	13	AK, CO, HI, ME, MT, NV, NM, ND, OH, RI, SD, VT, WA
<b>Subtotal—number of states with approved charters</b>	<b>13</b>	
<b>Total</b>	<b>51</b>	

Source: U.S. Commission on Civil Rights.

<sup>a</sup>These charters will expire in either September or December 2006.

### Changes in Membership Criteria Have Delayed Charter Renewal

The primary reason for the current delays in renewing the state advisory committees' charters is that the Commission recently initiated significant changes in the criteria for membership in the state advisory committees. In addition, the Commission chose to cancel pending applications for renewal until members could be chosen to serve on the rechartered committees that reflect the new membership criteria, further delaying the process of establishing active new charters for the committees. The new membership criteria were first proposed as a regulatory change in November 2005. As of February 2006, one portion of the criteria had been incorporated in a new regulation for the Commission; the remaining criteria had not been finalized.<sup>30</sup>

The proposed new membership criteria are substantially different from the previous criteria and could result in major changes in state advisory committee membership. First, the Commission's new policy requiring nondiscrimination in the selection of committee members was published in February 2006 as a new regulation. It supersedes the Commission's previous regulation requiring the membership of each state advisory

<sup>30</sup>On February 17, 2006, the Commission published its final rule on state advisory committee membership, which excised all of the specific information that had been mentioned in the proposed criteria. (See 71 Fed. Reg. 8483.) This final rule states simply that advisory committees shall generally consist of at least 11 members serving fixed terms who are appointed and removed by the Commission. It further states that no person shall be denied the opportunity to serve based on race, age, sex, religion, national origin, or disability. Other criteria will be delineated in the Commission's administrative manual.

committee to reflect and be representative of the state’s population. It also replaced a 1990 administrative policy that required minority group membership to be no less than 40 percent or more than 65 percent of the state advisory committee. Secondly, the proposed new criteria would require the Commission to consider selecting members with more academic technical skills, such as knowledge of law and statistical analysis, instead of having general skills and a diversity of experience and knowledge from business, labor, and other perspectives. Finally, the proposed new criteria would require each advisory committee to include “members of both political parties.” If adopted, this will replace the previous regulation requiring the committees to reflect the political affiliation proportional to the demographics. In addition, the criteria do not refer to members who are politically independent, although independents currently make up about one-quarter of the committees’ membership. See table 2 for a comparison of the previous and proposed new criteria.<sup>31</sup>

**Table 2: Comparison of the Previous and Proposed New Criteria for State Advisory Committee Membership**

Previous criteria	Proposed new criteria
Diversity <sup>a</sup>	Diversity <sup>c</sup>
Membership shall be reflective of the different ethnic, racial, and religious communities within each state, and the membership shall also be representative with respect to sex, political affiliation, age, and disability status.	No person is to be denied an opportunity to serve on a state advisory committee because of race, age, sex, religion, national origin, or disability. The Commission shall encourage membership on the state advisory committee to be broadly diverse.
Political representation <sup>b</sup>	Political representation <sup>d</sup>
The membership should reflect the bipartisan character of the Commission.	Each committee should have members of both political parties.
Knowledge <sup>e</sup>	Knowledge <sup>d</sup>
Skills to facilitate the work of the Commission. The handbook also notes that a broad cross-section of representation should be based on other factors such as business and labor. This diversity gives the committees the benefit of a wide range of knowledge, experience, and perspective on many subjects, which should also help ensure that advice will be given serious consideration.	Consideration of experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis; professional expertise and attainment; demonstrated interest in civil rights issues of color, race, religion, sex, age, disability, and national origin and in voting rights.
Term length <sup>b</sup>	Term length <sup>d</sup>
Members are appointed for a 2-year term with no limit defined for the number of 2-year terms that could be served.	10 years or five 2-year terms.

Source: GAO analysis of U.S. Commission on Civil Rights documents.

<sup>31</sup>The criteria proposed in the Notice of Proposed Rulemaking will be detailed in forthcoming Administrative Instructions. See 70 Fed. Reg. 8483 (Feb. 17, Nov. 2006).

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<sup>a</sup>45 C.F.R. 703.5 (2005).

<sup>b</sup>The Commission's State Advisory Committee Handbook.

<sup>c</sup>71 Fed. Reg. 8483 (Feb.17, 2006).

<sup>d</sup>This criterion was proposed in the Notice of Proposed Rulemaking issued on Nov. 4, 2005. 70 Fed. Reg. 67129. The Commission has announced that it will be included in the new Administrative Instructions. See 71 Fed. Reg. 8483 (Feb.17, 2006).

The proposed new criteria require both political parties to be represented, and FACA requires that federal advisory membership be fairly balanced in terms of the points of view represented and the functions to be performed.<sup>32</sup> However, it is not yet clear how the Commission intends to achieve this balance. According to the Staff Director, having one person of a minority party on an 11-member state advisory committee would meet a new criterion for each committee to have members of both political parties.

According to the Commission's Chair, the new membership criteria were developed in order to, among other things, move away from racially and ethnically based representation toward greater diversity in expertise and ideas. For example, according to the Staff Director, the proposed new membership criteria are intended to increase the diversity of skills among committee members. One reason for this is that because of the shortage of staff in the regional offices, the Commission is considering having state advisory committee members contribute to the writing of reports themselves, a course of action that, in the view of the Staff Director, would require committee members to have the expertise needed for such an undertaking. In addition, according to the Chair, limiting members' terms to 10 years or five 2-year terms will promote the selection of more new members with new ideas.<sup>33</sup>

The Commission received several objections to its decision to suspend the charter approval process until the membership criteria had been finalized. In July 2005, the chairs of 32 state advisory committees sent a letter to the Commission Chair requesting that pending charter applications be approved and stating that there was no justification for not approving

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<sup>32</sup>See 5 U.S.C. App. 5(b)(2) and(c).

<sup>33</sup>While the previous membership criteria defined a term as 2 years (the length of the charter), there was no mention of how many 2-year terms could be served, and members were commonly reappointed for many terms. For example, 22 percent of the chairs who responded to our survey reported that they had served on the committee for more than 20 years.

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charters pending policy formulation. During a Commission meeting in August 2005, at which this issue was raised, one Commissioner made a similar proposal, adding that this would also allow the Commissioners more time to consider whether to change the membership criteria. However, the majority of the Commissioners voted not to extend the state advisory committees' charters or conditionally approve charter renewal applications that had already been filed.

### Some Committees Have Continued to Operate without Charters

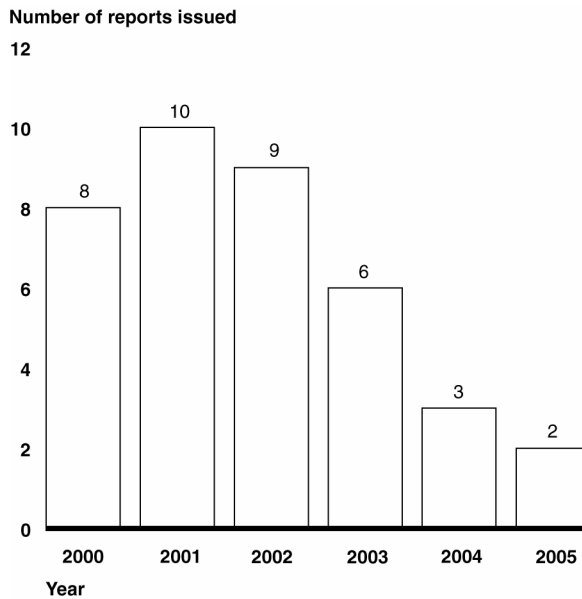
Although, under FACA, state advisory committees that do not have an approved charter cannot meet or conduct any business, we found that—both in the past and recently—the committees have continued their activities while their applications for renewal were being considered. In the past, many state advisory committees continued working without a charter, according to agency officials we interviewed. Until recently, when we questioned the Commission about the current delays in approving the committees' charters, we found that state advisory committees in several states have routinely continued their work and meetings. For example, representatives of two advisory committees told us that they generally operate normally, except for the actual publishing of reports, when they do not have an approved charter. However, in December 2005, after the Commission consulted with its solicitor, the Staff Director informed the state advisory committees that holding meetings and engaging in other activities were not permissible under FACA in the absence of a charter.

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### State Advisory Committee Activities Have Declined

Since 2000, the number of state advisory committee reports that have been published has declined considerably, partly because limited funding has contributed to a reduction in regional staff, travel, and other committee activities, and also because of the Commission's delays in approving state advisory committee reports. According to the Commission's policy, state advisory committees should complete one project every 2 years if funding and staffing permit. With 51 state advisory committees, committee reports have been the mainstay of the Commission's publications, and state advisory committees have produced 200 of the 254 Commission reports published since 1980. In the past 5 years, the committees have produced 38 reports. As shown in figure 1, since 2001, the number of reports issued by the state advisory committees each year has steadily declined.

**Figure 1: Number of Reports Issued by State Advisory Committees, 2000 to 2005**



Source: U.S. Commission on Civil Rights, Catalog of Publications, 2005.

## Declines in Regional Staff Have Limited the Committees' Activities

Over the years—especially in the past 15 years—the number of staff in the regional offices has declined considerably because of office closures, attrition, and voluntary separations. According to Commission officials, in 1980, there were 10 regional offices and each office had a director, attorney, editor, and three or four civil rights analysts. In 1985, the number of regional offices was reduced from 10 to 3, their legal functions were moved to the national office, and the number of staff in each office was also reduced. In 1991, the Commission opened 3 additional regional offices, bringing the total up to 6 offices, but the number of staff in each office continued to decline. During the most recent 5-year period, as the agency's budget remained flat, these declines continued, with staff decreasing from 19 staff in 2000 to 9 in 2006. Currently, each of the 6 regional offices has only 1 or 2 professional staff—a total of 9 as of January 2006—and each regional office supports several state advisory committees, ranging from 6 to 14 committees for each office. Furthermore, the Commission has approved a plan to reduce the number of regional offices to 4 offices in fiscal year 2007 because of budgetary concerns. (See table 3.)



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**Table 3: Number of Regional Offices and Professional Staff, 1980 to 2006**

Year	Number of regional offices	Staffing
1980	10	a director, attorney, editor, and 3 or 4 civil rights analysts
1985	3	a director and civil rights analysts
1991	6	a director and civil rights analysts
2006	6	a director and 1 civil rights analyst (in two offices, one person fills both positions)
2007 (proposed)	4	Not yet determined

Source: GAO analysis of U.S. Commission on Civil Rights information.

This decline in the number of professional regional staff affects the ability of state advisory committees to carry out their work. The state advisory committees depend on regional staff to arrange meetings and hearings, conduct interviews and research, and write and process their reports. Because federal advisory committees cannot hold a meeting without having a designated federal official, a regional staff person must attend every state advisory committee meeting for every state in the region.<sup>34</sup> In our survey of state advisory committee chairs, 75 percent of chairs who responded reported that they were unable to hold meetings in the period 2000 to 2005 because no regional staff was available to attend. In addition, because the work performed by regional staff on the state advisory committee reports is extensive, it is difficult for the regional staff to work on more than one or two reports at one time. The members of one state advisory committee told us their regional office had established a “take turns” policy, where the one regional analyst works with one state advisory committee at a time. In addition, members of another state committee said that they were not able to produce reports with critical analyses because no regional staff with the appropriate expertise was available to conduct the work. As a result, the committee issued a “Statement of Concern” to the Commission, a document that does not have the impact of a report, instead of producing the analytical report that the committee had wanted on the issue.

### State Advisory Committees Also Hindered by Limits on Travel and Other Activities

The state advisory committees have also seen declines in their activities because they have rarely been able to travel or hold meetings. For example, of the chairs who responded to our survey, 85 percent reported

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<sup>34</sup>See 5 U.S.C. 10(e) (2000).

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that fact-finding and reporting activities were not undertaken because of budgetary constraints. In March 2005, the Commission told its regional offices and state advisory committees that no funds were available for travel, meetings, or hearings because of budget shortfalls. The agency's annual appropriation has remained at about \$9 million since 1995, resulting in several cost reduction measures throughout the agency. In January 2006, the Commission allowed some travel, telling state advisory committees with approved charters that a limited number of meetings could be held in fiscal year 2006. Since then, according to the Commission's comments on our draft report, 10 state advisory committees conducted meetings or briefings between February and April 2006.

In addition, regional office and advisory committee expenses cannot currently be tracked separately from the Commission's other activities, a fact that has made it difficult to determine the level of support provided by the Commission. FACA requires agencies to ensure that advisory committees have adequate staff, quarters, and funds for the committees to conduct their business. The Commission's statute also directs the establishment of at least one advisory committee in each state. Prior to 2002, the Commission had designated a specific portion of its budget—generally about \$2.5 million annually—for regional office and committee activities.<sup>35</sup> However, since 2003, the Commission has not identified specific funds for the regional offices and state advisory committees but, instead, has combined their expenses with other agency expenses, according to agency officials.

National Office Policies and  
Delays in Approving Advisory  
Committees' Reports  
Negatively Affect their  
Independence

The Commission's policies require state advisory committee reports to go through an agency approval process that could negatively affect the committees' independence. Such policies include a requirement for the Staff Director's approval of all state advisory committee activities and reports. Specifically, according to the Commission's policies, the Staff Director must approve proposals for nearly all types of state advisory committee activities, as well as any significant changes to these proposals. In addition, when state advisory committees send approved reports to the national office for editorial and legal reviews, the Staff Director's office determines whether the evidence, testimony, and research in these reports

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<sup>35</sup>According to the Commission's policy manual, the regional offices provide required support services to the advisory committees.

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support the conclusions.<sup>36</sup> Finally, according to Commission policy, “under no circumstances” can state advisory committee reports “be released to the public or forwarded to the Commissioners without the Staff Director’s approval.”

In our discussions with state advisory committee members and regional office staff, many complained about the Commission holding up or attempting to interfere with committee products. For example, members of several state advisory committees told us that, in the past few years, they had sent completed reports approved by the committees to the Staff Director’s office, but the reports were not published or given to the Commissioners and the committees were not told what happened to them. Members of another state advisory committee told us that, because of the long time it takes for the national office reviews and approvals, it has taken 2 to 3 years for a report to be published. In addition, slightly over half of the survey respondents reported that they were dissatisfied or very dissatisfied with the national office’s timeliness in approving their reports. Some state advisory committee members told us that, at times, the window of opportunity for making an impact has passed by the time the national office publishes a state advisory committee report. For example, one committee chairman stated that it took the Commission 4 years to publish the committee’s report on limited English proficiency. He noted that “When it was released, the information was so stale as to render our effort meaningless...” Another state committee chair commented that issuing reports so late is “an exercise in hindsight.” This is not a new problem. In 1986, in response to concerns about delays in the issuance of state advisory committee reports, among other things, Congress held hearings on the subject. We testified on the decline in the number of state advisory committee reports and noted that the Commission had released two committee reports in 1985 but not as official Commission documents.<sup>37</sup>

In February 2006, the Commission changed its policy for the Commissioners’ review of state advisory committee reports. According to

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<sup>36</sup>The Office of the Staff Director makes this determination on a checklist that regional offices use for transmitting committee reports to the national office, and this checklist contains a question on whether the report’s evidence, testimony, and research support the conclusions as well as other questions on the report’s balance.

<sup>37</sup>GAO, *The Operations of the United States Commission on Civil Rights*, (Washington, D.C.: Mar. 25, 1986).

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the new policy, Commissioners will receive all state advisory committee reports, but will no longer be asked to vote to accept or reject the reports, as they had done in the past. The intention in making this change was to allow the public access to the state advisory committees' work without necessarily conveying the impression that the Commission endorses their findings. However, the new policy leaves in place the role of the Staff Director (or his designee) in ensuring the reports' adherence to the Commission's procedural and legal criteria for state advisory committees. Reports that have satisfied these criteria will be printed with a disclaimer stating: "The views expressed in this report and the findings and recommendations contained herein are those of a majority of the members of the state advisory committee and do not necessarily represent the views of the Commission, its individual members, or the policies of the United States government." According to two Commissioners in their comments on our draft report, the Commission will be reviewing project procedures for state advisory committee products as it did previously for national office products.

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### The Current Commission Has Not Generally Sought Input from the State Advisory Committees on Its Work or Operations

Until recently, the current Commission officials have not generally considered the views of the state advisory committees when planning future national office work. For example, in developing the agency's new draft 5-year strategic plan, the Commission did not solicit the perspective of the state advisory committees on their role in accomplishing the agency's strategic goals. As of January 2006, the state advisory committees had not been involved in developing the agency's draft strategic plan, although they are key stakeholders in accomplishing the Commission's goals. The first draft of the strategic plan that was submitted for stakeholder review in October 2005 scarcely mentioned the role of the state advisory committees, despite their statutory role or their many contributions to the Commission's work over time. The congressional staff who reviewed the draft plan asked the Commission to include more information on the role of the state advisory committees in the plan, among other comments. Although the Commission obtained the perspectives of two regional directors who participated in a working group on the strategic plan, the Commission did not solicit the views of state advisory committee members. According to the Staff Director, the Commission is now working to include goals that incorporate the role of the state advisory committees in its strategic plan, including obtaining the views of the state advisory committees on the Commission's goals and their role in accomplishing these goals. In February 2006, the Staff Director solicited the input of the state advisory committees in identifying possible topics for the Commission's 2008 statutory report.

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The Commission has also not generally obtained the views of the state advisory committees when making organizational changes that directly affect the committees. For example, when the Staff Director proposed in April 2005 to close two regional offices in fiscal year 2006 as part of a larger plan to reduce agency expenses, the Commissioners approved the proposed closures without obtaining any input from the state advisory committees on how closures would affect their ability to conduct their work.<sup>38</sup> In addition, according to the Chairman of the Commission, the state advisory committees did not participate in the development of the new criteria for state committee membership until after the criteria had been proposed. After receiving comments on the Commission's failure to consult with the state advisory committees from several members of Congress, outside civil rights organizations, and others, the Staff Director held a meeting by conference call with all of the regional directors to discuss the proposed membership criteria and proposed office closures. However, in January 2006, the Staff Director reported that he had sought the perspectives of state advisory committee members in the 13 states with active charters on whether to ask Congress to extend the terms of the charters and the chairs to 4 years instead of the current 2 years. The Commission received comments on the proposed request from about half of the active committees. According to the Staff Director, most of them agreed with the proposal to extend the terms of the committees' charters and the chairs to 4 years.

Another indication of the Commission's failure to involve the state advisory committees in its planning and decision-making efforts is its poor communication with the committees. For example, when the Staff Director and Commissioners agreed to close two of the regional offices, they did not inform the regional directors, who are the liaisons to the state advisory committees, until 3 days later, according a regional director. Instead, two regional directors learned about the decision from sources outside the Commission, including the local newspaper. In addition, only 22 percent of state committee chairs who responded to our survey reported that they were satisfied with the quality of their communication with the national office. Furthermore, several state committee members we interviewed told us that there should be more communication between the state advisory committees and the Commission and that they believed that the Commission did not understand the role of the committees. More specifically, members told us that they thought the Commission could

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<sup>38</sup>The planned closures were later postponed to fiscal year 2007.

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make more effective and efficient use of the advisory committees if they knew what issues the Commission saw as priorities and how they could contribute to the Commission's vision and goals. For example, several state advisory committee members said they thought joint reports prepared by more than one committee would be more efficient and allow the Commission to obtain more comprehensive views on a particular issue. In our survey, respondents identified several civil rights issues they had in common, such as housing, education, and employment for immigrants and various elements of the justice system.

The Commission has not provided for independent oversight of its policies and practices for state advisory committees, despite the long-standing nature of many of the issues we identified regarding the Commission's lack of consultation and communication with the state advisory committees, delays in renewing charter applications, and lack of timeliness and other issues in approving state advisory committee reports. Obtaining the services of an Inspector General, as we recommended in our 2004 report, could provide this oversight.

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## Conclusions

Without having policies in place for ensuring the objectivity of its reports, briefings, and hearings, the Commission cannot provide adequate assurance that it is achieving its mission as an independent, bipartisan fact-finding agency by informing often controversial debates over civil rights issues for the public's benefit. It is therefore important for the Commission's credibility that its Commissioners and Staff Director base their work on sound criteria and that the Commission's reports and other products include varying perspectives so as to be recognized as fair and impartial. The Commission's briefings and hearings also run the risk of appearing biased, rather than objective, in the absence of a policy for identifying and selecting speakers and witnesses who can bring to bear a range of perspectives and expertise. Furthermore, by using an external reviewer for its reports without having a process for considering the use of such reviewers, the Commission risks introducing one-sided commentary on its products and is not availing itself of an important avenue for helping to ensure the objectivity of its analyses. The absence of such policies leaves the Commission less accountable to the public for its decisions related to its reports. Moreover, its credibility and independence could be compromised by the failure to engage all of the Commissioners in its decisions and to document substantive decisions made outside of public view.

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As the eyes and ears of the Commission, the state advisory committees are critical to the work of the Commission. However, a variety of problems inhibit them from successfully carrying out their important function. These include continued delays in renewing charters as well as declines in regional staff and other forms of support for the state advisory committees. The Commission's budgeting practices make it difficult to gauge the level of funding provided to the committees in order to use this information to analyze trends, such as the comparison of funding for reports for the national office versus the advisory committees and to make decisions about priorities. Furthermore, the potential impact and usefulness of state advisory committee reports can be significantly reduced if they are not reviewed and issued speedily or if the Commission's review policies constrain the reports' direction or findings. The Commission also cuts the line of communication on important civil rights issues from the local level to the national level if it does not seek the perspectives of state advisory committees in planning its work, determining long-term goals and strategies, or making organizational decisions that directly affect the committees. However, despite the long-standing nature of many of these issues, the Commission has not obtained independent oversight by an Inspector General of its policies and practices for state advisory committees. In a time of large budget deficits and fiscal constraints, addressing these issues would allow the Commission to better leverage its resources by drawing upon this nationwide network of volunteers who could enrich the national perspective on civil rights and allow for more informed decisions by the President and Congress.

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## Recommendations for Executive Action

(1) In order to better ensure the quality of the Commission's national office products, the Commission should

- require that its written products consider varied and opposing perspectives, and that the process for achieving this be well documented;
- develop a process for using external reviewers that includes criteria for determining when to use external reviewers, identifying a range of appropriate reviewers, and ensuring that the selection process is impartial and transparent to the Commissioners and the public; and
- include criteria for Commissioner and Staff Director reviews of national office reports—from project proposal through final draft—in its policies and require substantive decisions and changes to be documented.

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(2) In order to ensure that relevant information and perspectives are covered in a comprehensive manner during briefings and hearings, the Commission should

- require that the selection of speakers for briefings and witnesses for hearings include balanced, varied, and opposing perspectives, and that this process be well documented.

(3) In order to ensure that the Commission can provide advice to Congress and make the most effective use of the state advisory committees, it should

- develop and implement a formal process for approving state advisory committee charters with specific timetables to ensure their approval in a timely manner and for appointing and seating advisory committee members promptly after charter approval;
- renew its practice of separately identifying funds for the regional offices and state advisory committees to better evaluate the adequacy of funding for supporting the committees, given budgetary constraints;
- establish required time frames for Staff Director reviews in order to ensure that state advisory committee reports are published in a timely manner; and
- integrate the state advisory committees' mission and work in its strategic planning and decision-making processes, including articulating how the national office will use the state advisory committees' findings on state and local civil rights issues to inform the Commission's national goals and strategies.

(4) In order to ensure that the Commission's processes are well documented and its policies are followed, the Commission should

- establish an external accountability mechanism, such as seeking the services of an existing Inspector General from another agency.

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## Agency Comments

We provided the U.S. Commission on Civil Rights with a draft of this report for review and comment. In the agency's response, the Staff Director did not comment on our conclusions or recommendations but instead described actions the Commission had taken to improve its management and financial controls, the operations of the state advisory



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committees, the role of the Commissioners, and internal review procedures for its reports and briefings. We had already discussed most of these actions in our report, and we added information on recent state advisory committee activities that the Staff Director provided in his comments. While many of these actions are positive steps, they do not address the matters upon which we based our recommendations, such as the Commission's lack of a process for using external reviewers for its national office reports. Therefore, we continue to believe that further actions are needed. Our recommendations identify the specific steps we believe should be taken to strengthen the quality of the Commission's products and make better use of its state advisory committees. The Staff Director's comments are contained in appendix II.

Although we did not solicit comments from the Commissioners, the Staff Director provided them with an opportunity to respond to our draft report, and three of the seven Commissioners provided us with comments.<sup>39</sup>

One Commissioner agreed with the contents of the draft report. In his letter, he stated that the report's findings and recommendations provide a framework for improving the Commission's procedures and enhancing the credibility, balance, and transparency of the Commission's work. He also noted that, although the Commission had implemented many of the recommendations in our previous reports, it has not updated its strategic plan nor retained the services of an Inspector General as we recommended in 2004 and in this report.

The Vice Chair and one Commissioner strongly disagreed with the draft report's approach, tone, and conclusions and asserted in their joint letter that the report was biased and unbalanced. We believe that our report is balanced and unbiased. As described in our scope and methodology, we designed and conducted this engagement in accordance with generally accepted government auditing standards. The Commissioners' major concerns included the following:

- The Commissioners stated that it was misleading for us to criticize the Commission's reports for their lack of objectivity. This view appears to emanate from a misunderstanding of our audit objectives. It was not

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<sup>39</sup>The Commissioner who wrote a letter agreeing with our report is a Republican. Of the two Commissioners who wrote a joint letter disagreeing with our report, one is a Republican and one is an Independent, although she was appointed to the Commission as a Republican in 2001 but changed her party affiliation to Independent in December 2004.

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within the scope of our study to assess the objectivity of the Commission's reports. As noted in the report objectives, our purpose was to analyze the Commission's policies for ensuring the quality, including objectivity, of its reports and other products. When we discussed specific Commission reports or briefings, we did so to illustrate issues that arose when the Commission did not have written policies, not to provide an assessment of the content of individual products.

- The Commissioners asserted that the draft report was biased because we did not interview all of the Commissioners. Our evaluation focused on assessing the adequacy of the Commission's policies and the role of the state advisory committees and was not contingent upon obtaining the views of every Commissioner about these policies or the committees' role. Therefore, we disagree with the Commissioners' assertion that, because we did not interview all of the Commissioners, the report is biased in its assumptions and conclusions.
- The Commissioners stated that our finding that the Commission did not include the state advisory committee members in its strategic planning process was an unwarranted attack. We do not agree with this characterization. Our recommendation is intended to provide a constructive suggestion for improving the Commission's strategic planning. At the time of our review, Commission officials told us and the congressional committees that provide oversight of the Commission that they did not solicit the input of the state advisory members in developing its draft strategic plan. In addition, our report recognizes that the draft strategic plan had not yet been completed. To the extent that the final plan includes the perspectives of and better defines the role of the state advisory committees, it will be a more complete plan. This is the basis for our recommendation.
- Finally, the Commissioners stated that the report did not sufficiently acknowledge the significant policy and other changes made by the Commission and that the previous leadership of the Commission was responsible for many of the issues discussed in our report. We acknowledged throughout the report the current leadership's changes to the Commission's reporting and state advisory committee policies. Our findings and conclusions are based on the policies and operations of the current Commission, including the new policies.

Comments from the three Commissioners and our responses are contained in appendixes III and IV. We incorporated clarifications and updates in the report as appropriate.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of the report. At that time, we will send copies of this report to the U.S. Commission on Civil Rights and other interested parties. We will also make copies available to others upon request. It will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you have any questions about this report, please contact me at (202) 512-9889 or at [robertson@gao.gov](mailto:robertson@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VIII.

A handwritten signature in black ink that reads "Robert Robertson". The signature is written in a cursive style with a large initial "R".

Robert E. Robertson  
Director, Education, Workforce,  
and Income Security Issues

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# Appendix I: Objectives, Scope, and Methodology

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Our objectives in this study were to assess (1) the adequacy of the Commission's policies for ensuring the quality of its products and (2) the role of the state advisory committees in contributing to the Commission's work. To address these objectives, we reviewed documents such as relevant statutes, regulations, and administrative policies of the Commission; transcripts and minutes of Commission meetings; and recent Commission and state advisory committee reports. We interviewed Commission staff, including the Staff Director, and three Commissioners—the Chair, one Republican member, and one Democrat. We also attended monthly meetings of the Commission, including briefings.

In addition, to analyze the quality assurance policies for its products, we reviewed the Commission's administrative policies for its reports, briefings, and hearings. We also reviewed the policies used by the National Academies of Sciences and the Congressional Budget Office (CBO) to ensure the quality of their products and guidance from the Office of Management and Budget on ensuring the quality and objectivity of information disseminated by federal agencies, in addition to considering GAO's own policies. We also interviewed officials from the Academies and CBO. In addition, we reviewed the Commission's files for a selection of recent national and state advisory committee reports and interviewed national and regional office staff.

## Survey of State Advisory Committees

In addition, we conducted site visits to all six regional offices, where we interviewed regional staff to determine the support they provide to the committees. To analyze the state advisory committees' role in accomplishing the Commission's fact-finding and reporting mission, we conducted a survey of the 51 committee chairs and we received responses to this survey from state advisory committee chairs and former chairs in 36 states. We conducted site visits to all 6 regional offices, where we interviewed regional staff to determine the support they provide to the state advisory committees. We also interviewed the state advisory committee chairs and members in 11 states to understand how they operate and their experiences with the Commission's national and regional offices. We interviewed officials at the General Services Administration who administered the Federal Advisory Committee Act and reviewed related documentation. In addition, we reviewed the most recently approved state advisory committee charters, interviewed Commission officials who work with the regional offices, and reviewed state advisory committee regulations and policies. We conducted our work from April 2005 to March 2006 in accordance with generally accepted government auditing standards.

One of our methods for determining the adequacy of the Commission's policies and the role of the state advisory committees was to survey the chairs or former chairs of each state advisory committee.<sup>1</sup> We sent a questionnaire to all state advisory committee chairs in each state, including the chair of the District of Columbia's committee. We conducted the survey from July 7, 2005, through August 31, 2005. We received responses from state advisory committee chairs and former chairs in 36 states.

To prepare the questionnaire, we asked knowledgeable officials from the state advisory committees and survey professionals to comment on the questionnaire, and we pretested the questionnaire to ensure that the questions were clear and unambiguous, terminology was used correctly, it did not place an undue burden on the respondents, the information was feasible to obtain, and it was comprehensive and unbiased. We pretested the questionnaire with state advisory committee chairs in a geographically diverse group of states by means of telephone and face-to-face interviews. On the basis of the feedback from these pretests, we made changes to the content and format of the questionnaire.

The questionnaire asked a combination of open- and close-ended questions about each state advisory committee and the activities it had undertaken in the previous 5 years. The questionnaire also asked the chairs to comment on their experiences working with the Commission's regional and national offices.

To ensure an adequate and appropriate response to our questionnaire, we sent an e-mail in advance to establish the correct respondent. We also sent two reminder letters and followed up with telephone calls to those who had not yet responded. All respondents who had not sent in a survey after approximately 4 weeks were telephoned by GAO and asked to participate. The majority of respondents completed the survey electronically but some faxed copies of their answers to GAO. In these cases, the faxed responses were entered into a database by contractors hired by GAO. Quality assurance steps were taken to ensure the accuracy of the data entry.

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<sup>1</sup>Because the Commission was unable to provide us with a current list of all of the state advisory committee chairs, we obtained the list from one of the state advisory committee chairs.

Because this was not a sample survey, there are no sampling errors. However, the practical difficulties of conducting any survey may introduce errors, commonly referred to as nonsampling errors. For example, difficulties in how a particular question is interpreted, in the sources of information that are available to respondents, or in how the data are entered into a database or were analyzed can introduce unwanted variability into the survey results. We took steps in the development of the questionnaire, the data collection, and the data analysis to minimize these nonsampling errors. For example, social science survey specialists designed the questionnaire in collaboration with GAO staff with subject matter expertise. Then, the draft questionnaire was pretested with a number of state officials to ensure that the questions were relevant, clearly stated, and easy to comprehend. When the data were analyzed, a second, independent analyst checked all computer programs. In several cases, we contacted respondents to clarify their responses to the questions, but we did not otherwise independently verify the information they provided.

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# Appendix II: Comments from the U.S. Commission on Civil Rights

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UNITED STATES COMMISSION ON CIVIL RIGHTS  
WASHINGTON, D.C. 20425

OFFICE OF STAFF DIRECTOR

April 17, 2006

Robert E. Robertson  
Director  
Education, Workforce and Income Security  
Government Accountability Office  
441 G. Street, NW, Room 5928  
Washington, DC 20548

RE: GAO Draft Report on Quality Assurance Policies State Advisory Committees

Dear Mr. Robertson:

The U.S. Commission on Civil Rights (the "Commission") received a copy of the draft Government Accountability Office (GAO) report on Commission quality assurance policies and the utilization of its state advisory committees. Though we have preliminarily reviewed the draft report, the Commission continues to analyze the report's findings and recommendations.

As you are aware, in December 2004, new leadership assumed office at the Commission committed to reforming agency management and restoring fiscal responsibility. Beginning in early 2005, the Commission swiftly moved to begin enacting a series of substantial reforms aimed at strengthening the agency's management controls. Included among these corrective measures are new internal policies governing acquisition management and travel that guard against waste and abuse; improvements to the agency's internal and external communications processes that provide consistency in the Commission's public statements and ensure that dissenting opinions are properly represented; updated guidance on budget formulation and execution; improved project cost accounting; and the completion of the agency's first financial audit. More generally, in 2005, the Commission's leadership unanimously voted to adopt and implement prior GAO report recommendations on agency management and financial controls to the extent that they are non-repetitive, that funds are available, and that implementation is consistent with restrictions imposed by the Anti-Deficiency Act. These measures, and others, contribute to improved agency fiscal and overall program management.

Notably, significant reforms have recently been adopted pertaining to the operation of the Commission's State Advisory Committees (SACs) that should increase SAC productivity, improve report quality and timeliness, and create membership diversity. On February 15, 2006, the Commission formally requested that Congress extend the length of advisory committee charters from two years to four years. This recommendation,

supported by the SACs, recognizes that advisory committees play a vital role in the ongoing mission of the agency and that Commission resources and time devoted to re-chartering advisory committees every two years come at the expense of supporting SAC fact-finding activities. If adopted by Congress, this measure should ameliorate the Commission's perennial re-chartering challenges. Also in 2006, the Commission established new advisory committee membership criteria prohibiting the use of racial preferences, and ensuring that Commission advisory committees represent a diversity of skills and experiences including legal research and analysis, social science research, statistical analysis, and knowledge of state government and public sector machinery. These changes will serve the nation well by further ensuring the representation of diverse viewpoints, and improving the quality of reports by making them more intellectually rigorous and data-driven. In a reform measure that is likely to reduce the length of time advisory committee reports are under review by the Commission, the Commission voted to eliminate the requirement that a majority of the Commissioners accept SAC reports for publication. Instead, these reports are published upon a finding by the Staff Director that they comply with applicable legal and procedural requirements. In FY05, two reports were published; however, this number is expected to increase if Congress provides the Commission with the modest requested budgetary increase for SAC travel.

The Commission has leveraged advisory committee member expertise and agency resources to enable significant SAC activities this year. Within the first few months of 2006, for example, the Commission supported the following SAC planning and briefing activities:

- the Alaska Advisory Committee conducted a briefing on finance parity among the state's school districts in March;
- the Hawaii Advisory Committee held a briefing on civil rights issues in the state in March;
- the Montana Advisory Committee met to conduct project planning on discrimination in reservation border town communities in April;
- the New Mexico Advisory Committee held a planning meeting and briefing on civil rights developments in February;
- the North Dakota Advisory Committee also conducted project planning on discrimination in reservation border town communities in April;
- the Ohio Advisory Committee held a briefing on the state's preparedness for the 2006 primary and general elections in April;
- the Rhode Island Advisory Committee met to plan for a project on the disparate treatment of minority youth in April;
- the South Dakota Advisory Committee met to conduct project planning on Native Americans and the criminal justice system in March;
- the Vermont Advisory Committee conducted project planning and held a briefing on immigration issues in March; and
- the Washington Advisory Committee held a briefing on education issues in March.



In addition, the Commission plans to have its Colorado Advisory Committee meet to advance project planning on discrimination in reservation border town communities, its Maine Advisory Committee to hold a planning meeting and a briefing on immigrant profiling by law enforcement, and its Nevada Advisory Committee to conduct a briefing on civil rights issues in the state by the end of May.

Though the current GAO report notes that the Commission has made changes in the role Commissioners play in project planning, the importance of these changes should not be understated. These changes, consistent with the statements of Commissioners during the March 2005 Commission meeting, demonstrate that the Commission is working hard to ensure the integrity and quality of its work products through reforms to the agency's national program planning process. The Commission's new program planning and execution processes provide increased Commissioner involvement in every key phase of project implementation and provide greater transparency and credibility. Over the last 16 months, and not unrelated to greater Commissioner involvement in planning projects, the Commission has increased its output of national civil rights-related briefings and reports. These briefings and their related reports reflect a diversity of opinion on current and emerging civil rights issues, even in the absence of formal written Commission policies. Recent briefings on the economic stagnation of the black middle-class, the soundness of using disparity studies in demonstrating discrimination, and the use of racial classifications on the 2010 census included subject matter experts with opposing views and from different disciplines. Likewise, the briefing on the Native Hawaiian Government Reorganization Act pending before Congress included an even balance of opposing views. Every effort is made to obtain the leading experts on a subject, regardless of political affiliation.

The quality of briefing reports is ensured through internal procedures such as affected agency review, editorial review, and legal sufficiency review. These procedural requirements have long been established in formal, written Commission policies and continue to be followed by staff. Affected agency review provides agencies affected by a report an opportunity to review relevant portions of the report for the accuracy of its depiction of agency policies, procedures, and data. Legal sufficiency review, conducted by the Commission's Office of General Counsel, ensures that national office and advisory committee reports accurately interpret legal theories, principles, concepts, and case law. This process also, as briefly noted in the GAO report, reviews reports to ensure that defamatory statements are appropriately identified and addressed according to Commission procedures published in the Code of Federal Regulations and in internal agency guidance. The editorial review process requires a board, composed of Commission staff with relevant experience selected by the Staff Director, to review reports for the thoroughness of the analysis, argumentation, balance, internal consistence, quality of the research, and overall quality. The Staff Director also has an important role in ensuring the quality of all Commission reports. The Staff Director's review of the draft *Adarand* report, for example, included an assessment of the quality, integrity, balance, fairness, and compliance with established internal processes during the preparation of the report. It also resulted in a determination, based on input received from Commissioners, that the report suffered from structural and organizational problems that would prevent it

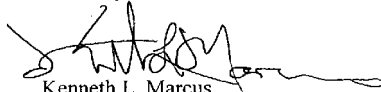
from receiving the support of the majority. As a result, two chapters were moved to different locations within the report based on their subject matter (not viewpoint), and edited to address additional Commissioner concerns regarding their quality and objectivity.

The Commission's commitment to quality is also evident in its handling of the draft campus anti-Semitism report findings and recommendations. The chairman of the Commission prepared a set of proposed alternative findings for consideration by the Commissioners based on concerns about the accuracy of the Commission's description of an agency's enforcement policies. The chairman's alternative findings triggered a discussion of various factual and legal issues that postponed the vote on the report. This postponement provided time to thoroughly explore the issues and ensure that the Commission's final work product was factually and legally sound.

The ability of the Commission to achieve its goal of being a source of civil rights information and data is rooted in its ability to conduct credible briefings and issue data-driven and reliable reports. In that vein, the Commission's recent reforms, including those mentioned in this letter, demonstrate an ongoing commitment to quality, balance, and transparency.

Rest assured that the Commission remains committed to an ongoing process of reform and appreciates the contribution GAO has made to that process.

Sincerely,



Kenneth L. Marcus  
Staff Director

# Appendix III: Comments from Vice Chair Thernstrom and Commissioner Braceras and GAO's Response

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



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

April 17, 2006

Mr. Robert E. Robertson  
United States Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

***Comment on Draft Report April 2006:  
"U.S. Commission on Civil Rights: The Commission Should Strengthen Its  
Quality Assurance Policies and Make Better Use of Its State Advisory  
Committees"***

Dear Mr. Robertson:

The series of GAO investigations into the mismanagement of this agency over the past two decades were long overdue. For far too long, Congress failed to exercise its oversight authority in relation to this agency. When we first arrived in 2001, we were appalled at how business was conducted and were anxious for the evaluation of the GAO and the oversight of Congress. The management issues were relatively simple to examine. There were statutes, regulations and procedures to follow and the agency's performance could be objectively measured.

We are disappointed in the approach, the tone and the conclusions in this current report. The subject matter – Commission reports and State Advisory Committees – both involve extensive participation by individuals with personal and political experiences that necessarily introduce subjective criteria. Each person appointed as a Commissioner and each citizen appointed to one of the 51 State Advisory Committees has his or her own idea of what constitutes a civil rights issue, what the law does do and should do, what the Commission should study and how the people on the Commission should interact with each other. To that end, the investigation for this report was poorly conducted and the conclusions are glaring for what is left unstated.

This report utterly fails to acknowledge the sea of change that has taken place at this agency. Under the leadership of our current Staff Director, we have undertaken the arduous and sometimes painful task of rewriting the agency's policies and working within the constraints of a decimated budget. The previous Chair had more than 10 years to destroy this agency's finances and credibility. It is unreasonable to expect that we can rectify all the damage in the 18 months or so that we have been in charge.

See comment 1.

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**Appendix III: Comments from Vice Chair  
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We admit that we are a work in progress and can utilize some of the observations of this report as we revise and refine our processes. We are actively working on reform issues even as we continue the daily business of this Commission. We have established working groups on State Advisory Committees and Strategic Planning that are focusing on many of the issues raised in this report. The failure of this report to acknowledge this ongoing effort at reform mistakenly leaves the reader with the impression that nothing is being done.

We have several specific concerns with this report and enumerate them below.

***Political Reality and Context***

This report fails to acknowledge the reality that the civil rights arena has largely become a political and legal battleground. Consequently, the accusation that the agency lacks objectivity in its reports and project management is misleading and irresponsible. The moral consensus that once informed civil rights discussions is gone. Segregated water fountains was a simple issue that all people of good will could agree on; racially gerrymandered districts and racial preferences in employment, education, and contracting are not. And thus definitions of "objectivity" differ from one commissioner to another. We would argue strenuously that, in contrast to the years under the previous chairman, we have made a serious and successful effort to bring before the Commission a range of views and to acknowledge forthrightly and with respect the voices of those who differ with the majority.

Because the U.S. Commission on Civil Rights is not an enforcement agency, it is positioned to explore competing and conflicting perspectives. However, inevitably there will be advocates who disagree with the approach taken or the final product. Our job is to attempt to find some common ground and achieve some consensus on controversial topics but seldom, if ever, does every member of the Commission leave the table 100 percent satisfied with the result.

Your investigators took the time and resources to travel to each of the six regional offices (something this agency cannot afford to do for itself), but did not even bother to place a phone call to more than two of the seven Commissioners. This Commission is comprised of political appointees. Each Commissioner comes to the table with political experiences, perspectives and agendas. The failure to interview all Commissioners about the content of reports and the future of the State Advisory Committees is a gross oversight. Consequently, this report is itself woefully biased in its assumptions and conclusions.

***Project Management and Reports***

This report accuses us of a lack of objectivity without defining what is objective. Moreover, while the Commission has taken (unappreciated) steps to improve our report development process, it has yet to implement fully the new procedures from conception to completion.

See comment 2.

See comment 3.

See comment 4.

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**Appendix III: Comments from Vice Chair  
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See comment 5.

The GAO focused on two recent projects, the FY 2005 statutory report on the implementation of the Supreme Court's *Adarand* decisions and the pending FY2006 statutory report on the reauthorization of the Voting Rights Act. However, your report failed to mention that the currently constituted Commission inherited both the *Adarand* statutory report and the Voting Rights Amendment statutory report from the previous leadership and the methodology of both reports was established several years ago.

Our new rules were designed to allow for more Commissioner involvement and commitment to projects. They were deliberately written to provide for the greatest amount of Commissioner oversight and flexibility, and also to avoid placing so many hurdles in front of staff that projects could not be completed in a timely manner.

Although our new rules do not explicitly state that reports *must include* opposing views, the entire process is designed to guarantee a balanced approach by giving Commissioners a number of opportunities to approve the progress of a project. We can consider adding an explicit statement to that effect to satisfy the GAO; however, the absence of such a statement should not be construed as an attempt to allow biased reports.

See comment 6.

The assertion that we demand more stringent requirements of the State Advisory Committee reports than we do for the national office reports fails to account for the fact that we have a working group on State Advisory Committees that will be reviewing project procedures for the SACs similar to the way we did for our national reports. The projects the SACs undertake in the future may be dramatically different from the current process for two reasons: 1) the agency does not have the financial resources to allow the SACs to operate as completely independent "mini-commissions" as they have done in the past, and 2) the strategic plan that is in development may emerge with a stronger partnership model for the SACs that would have the national office and the SACs engaged in complementary reports. The working group on SACs and the working group on Strategic Planning are both exploring the role of the SACs within the current budget constraints.

See comment 7.

Additionally, the often-repeated fact that since 1980 the SACs have produced 200 of the Commission's 254 reports fails to explore the validity or usefulness of those SAC reports. We have received several reports since 2001 alone that were poorly conceived, poorly written, completely biased and below the standards we are trying to establish for credible, scholarly work. A recent example would be the report by the Arizona SAC on illegal immigration along the U.S.-Mexico border. The report referred to the Border Patrol as though it was an illegal militia outside the control or constraints of the government. The report also demanded that the Congress "demilitarize" the border. The report was extremely biased in its tone and content. However, as this report discusses, the procedures by which the Commission used in the past to accept SAC reports allowed no opportunity to comment or vote upon the content of reports. We were in the untenable position of being asked to vote to accept or reject a fundamentally flawed document without being able to comment on its flawed content.

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Additionally, the SACs are governed by the Federal Advisory Committee Act and several SAC members have focused on a clause in the guidelines prohibiting us from using undue influence to guide their work. But the phrase "unduly influence" is itself as subjective as the subject matter undertaken by any SAC for a project. To avoid this tension in the future, the Commission adopted a new policy earlier this year to discontinue the practice of voting on SAC reports at all.

See comment 8.

This report fails to recognize or explore the possibility that the SACs and the work they have produced are in any way tainted. In fact, most of the work we have seen from the SACs since 2001 has been very biased. The process by which the SACs operate should not become the GAO's model for the national office of this agency.

***The Adarand Statutory Report***

As the new leadership took over at the Commission in December 2004, our first and most pressing issue was to determine how and where the agency's funding had been spent. With a barren office, a severely reduced staff and unpaid bills, the priority was on a stop to the bleeding. Staff had already done extensive work on the *Adarand* report and was not in a position to begin work on an entirely new statutory report in order to meet the deadline mandated by our governing statute. It is important to note that the new Staff Director made some decisions about the structure of the report in an effort to guarantee that we would meet that deadline. These decisions were made during a chaotic transition and before the Working Group on Reform had developed new report procedures.

At the time the decisions were made to make changes in the scope of the *Adarand* report, the Staff Director had no reason to know that he did not have the requisite authority, nor did he have at his disposal any historical information or written policy that directed him to submit all changes to the Commissioners as a body. In the past, the former Chair and the Staff Directors would unilaterally make changes to reports if they did not like the direction in which the staff's research had led them. As a result, there were indeed miscommunications and missteps, but the Commissioners made their intentions clear to the Staff Director in a public meeting and to rehash those missteps here in this report without context does a great disservice to the difficult job the new Staff Director faced and the graciousness with which he made every effort to accommodate the varying demands of Commissioners in a collapsed time frame.

See comment 9.

This GAO report criticizes the final *Adarand* report for our decision to eliminate two chapters. Had the investigators interviewed either of us, they would have been told that those two chapters were so poorly written as to undermine the quality of the report and for that reason they were cut from the final product. In addition to poor analysis, inaccurate portrayal of other research reports and substandard writing, the chapters in question focused on programmatic and political subjects as though the Court's rulings in the various *Adarand* cases were wrong and could be ignored. This is the political position taken by civil rights advocacy groups dissatisfied with the Court's decisions, but why should this agency replicate and republish their work? There was not enough time to undertake the extensive rewrites required and to still fulfill our mandate to issue a

statutory report within the 2005 fiscal year. In the end, we were compelled to eliminate the chapters that failed to address the responsibilities of federal agencies to implement the *Adarand* decision in order to get the report finished or face the consequences of failing to submit a report to Congress for FY 2005. We would hazard a guess that if the Commission had missed the deadline for submitting a statutory report in FY2005, that would have been a topic of extensive criticism in this report.

***Voting Rights Act Report***

The statutory report on the Voting Rights Act reauthorization is another project inherited from the Commission's previous leadership. Our timeline for this report was shortened not because of any failure on our part to craft and develop a strong product, but rather as a consequence of the decision by Congressional leaders to take up the reauthorization in 2006 instead of 2007 when the current authorization expires. We were already committed to the VRA as our statutory report for FY 2006 and forced by the Congressional schedule to scale back the scope of the report so that we could deliver it in a timely manner. Again, we have not implemented our new policies on this project from start to finish because we inherited both a project concept and a substantially drafted report from the previous Commission.

***Briefings***

We strongly disagree with the accusation made in this report that "the Commission does not have a policy for specifying how speakers for the briefings are to be identified or requiring that briefing panels be balanced and include a variety of perspectives." The new project policies adopted in May 2005 outline a process by which briefings are defined and approved. We intentionally crafted a policy that would allow flexibility in the selection of topics, dates and speakers. We wanted a vehicle that would allow us to explore issues that may not be on the Congressional agenda, or to respond quickly to current events.

Because these forums are less formal than a hearing where panelists are issued subpoena and sworn in, the process will inherently invite complaints of unbalance. First, many of the issues selected for briefings do not lend themselves easily to a pro/con dichotomy. There are numerous areas that some advocacy groups seek to see included in civil rights protection, while others see the current laws as too encompassing. The purpose of briefings is to explore either the civil rights implications of policy battles, or to explore a perspective on an issue that has not received large attention in the public policy arena. Second, because we do not compel witnesses to appear, there will be times when invited speakers decline our invitations, scheduled speakers cancel at the last minute, or an invited speaker requests another speaker to highlight a particular aspect of the issue. Consequently, we cannot always guarantee an exact numeric balance of pro and con speakers but we can assure the GAO that the effort to explore a number of opinions is paramount. In fact, all Commissioners are encouraged to make recommendations for speakers and the policies adopted in May 2005 ensure that those in the minority are given adequate opportunity to influence the make-up of our briefings.

See comment 10.

**Appendix III: Comments from Vice Chair  
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***State Advisory Committees***

This report discusses the State Advisory Committees as though they were fully integrated components of the Commission's work, with the suggestion that their estrangement from the national office is a new development. Again, the disconnect between the SACs and the Commissioners is a situation created by the previous Chair and headquarters leadership. Prior to the retirement of several Regional Directors, they had control over both the membership and the work of the SACs.

In the period in which we served on this Commission prior to the current leadership and Staff Director, we rarely heard about the activities of the SACs, had no idea how the membership was selected, and had no control over or input into how and when SAC reports were delivered to us. It was a source of continued frustration that we were expected to vote to accept SAC reports without any knowledge of how the project was developed. Additionally, we were mystified as to why reports were usually several years outdated by the time we received them. As mentioned above, our working group on State Advisory Committees is attempting to unravel and rebuild the structure, duties, membership and processes for the SACs within our strict budget constraints.

The new membership criteria are only now being implemented by the Regional Directors. The process of recruiting and then retaining a minimum of eleven citizens for a two-year term on a SAC is a daunting challenge, especially in light of the fact that we do not have the resources for members of these groups to travel and conduct face to face meetings. It is our hope and intention that the new criteria will accomplish two goals: 1) eliminate the discriminatory policy of achieving quotas for membership, and 2) allow more flexibility and ease for the Regional Directors in recruitment.

As can be expected, there are some individual SAC members and perhaps even staff members who disagree with the new approach. Again, this highlights the political tensions evident within the civil rights movement. We will not achieve perfect consensus; we can only acknowledge and respect different viewpoints. Additionally, the report criticizes the inclusion of political parties in the membership criteria. There are only two identified political parties that appear on the ballot and voter registration cards of every state in the union. The membership criteria do not state that individuals must be a member of one of the two major parties, nor do they preclude the selection of an individual who belongs to an identified party or no party at all.

This report repeatedly declares that the SACs are the "eyes and ears" of the agency in the states. This phrase is essentially meaningless for several reasons. Because of civil rights laws at the federal and state levels, there are very few civil rights violations occurring in states that are tolerated as they were when this agency was created. Because of improvements in media coverage and communications, individuals with civil rights complaints have a wide variety of outlets, including the national headquarters, where a complaint can be lodged. Because of FACA, we cannot compel the SACs to participate in a national project with us, nor can we instruct them on what to investigate in their state.

See comment 11.

See comment 12.



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See comment 13.

Consequently, many SAC projects have no connection to nationally pressing issues that may be of interest to Congress or other agencies.

The presumption that the SACs have always served an integral or even valuable role in the work of civil rights is unfounded. The role of the SACs and their relationship to the national headquarters was not fully vetted during the legislative process to reconstruct this agency in the early 1980s. The SACs were mandated as a political maneuver and it would serve the public well if their existence and responsibilities were considered anew rather than rubber-stamped.

This report also criticizes the Commission for failing to include the SAC members in the strategic planning process. This is a ludicrous and unwarranted attack. The working group on Strategic Planning is still working on outreach to stakeholders. The GAO is well aware that our strategic planning process is a current and ongoing initiative. The complaints lodged against that process in this report are premature and misleading.

***Conclusion***

It is time that the previous leadership of this agency is held accountable for the mismanagement of the agency. It is they, and not the current Commissioners or staff, who led this agency into chaos. While we recognize that there is still room for improvement, we are also very proud of the progress we have made since January 2005 when the work to reform this agency began.

While we are committed to working with the Congress and take seriously the recommendations of the GAO in this process, we feel that this particular report is lacking in balance and undermines some of the efforts that are still in progress.

Respectfully,

ABIGAIL THERNSTROM  
Vice Chairman



JENNIFER C. BRACERAS  
Commissioner



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## GAO's Response to Comments

1. The Commissioners stated that the report does not acknowledge the significant changes that have taken place at the agency and its efforts at reform. To the contrary, the report acknowledged numerous changes to the Commission's reporting and state advisory committee policies by the current leadership. For example, we noted that, after the arrival of new leadership, the Commission began to reevaluate its policies on product development and state advisory committee matters and, in discussing the Commission's quality assurance policies for its products, we reported on the increased involvement of the Commissioners in product development, describing it as a "significant improvement over previous Commission policy." In addition, we devoted a considerable portion of two appendixes to the Commission's process for developing and approving national and state advisory committee products, including policy changes. With regard to the state advisory committees, we similarly analyzed the Commission's policy changes to the committees' membership criteria and publication of state advisory committee reports.
2. The Commissioners asserted that it was misleading for us to criticize the Commission's reports because they lack objectivity. This view appears to emanate from a misunderstanding of our audit objectives. It was not within the scope of our study to analyze the objectivity of the Commission's reports. As noted in our report, our purpose was to analyze the Commission's policies for ensuring the quality of its reports and other products. When we discussed specific Commission reports or briefings, we did so to illustrate issues that arose when the Commission did not have written policies, not to assess the content of individual reports. We observed that the Commission lacks several policies for its product development that could help ensure the objectivity of its reports and briefings. We focused especially on policies that other organizations, such as the National Academies, the Congressional Budget Office, and GAO, consider important to ensuring the quality of their reports and other products.
3. Our evaluation focused on assessing the adequacy of the Commission's policies and the role of the state advisory committees. Our assessment was not contingent upon obtaining the views of every Commissioner about these policies or the committees' role. Therefore, we disagree with the Commissioners' assertion that, because we did not interview all of the Commissioners, the report is biased in its assumptions and conclusions.

4. The Commissioners stated that we did not define the term “objectivity” in criticizing the Commission’s work. We added a definition of objectivity to our report.
5. We disagree with the Commissioner’s statements regarding our review of the Commission’s statutory reports. First, the scope of our report did not include a review of the pending 2006 report on the reauthorization of the Voting Rights Act. Second, in discussing the 2005 statutory report on Adarand, we noted that the project was originally approved in 2003 under the previous leadership. However, we also noted that the current leadership had a significant hand in revising the direction of the research questions that were sent to federal agencies to obtain information for the report. The current Commission also approved an outline for the Adarand report and had several opportunities to comment on the draft report. Furthermore, contrary to the Commissioners’ statement, the current Commission proposed and approved the October 2005 briefing on the Voting Rights Act, not the previous leadership. This briefing was the subject of our discussion on the Commission’s speaker selection policies. In appendix V of our report, we referred to, but did not otherwise discuss, the Commission’s pending 2006 statutory report on the Voting Rights Act.
6. Our report acknowledges the new policy on the Commissioners’ role in reviewing state advisory committee reports and publication requirements that was approved in February 2006. We added a note to our report acknowledging that the Commission will be reviewing its project approval procedures for state advisory committee products as it did previously for national office products.
7. As noted earlier, we did not review the content of either national office reports or individual state advisory committee reports to assess their quality. However, if the Commissioners have major concerns about the quality of the state advisory committee reports, they should take a hard look at the committees’ adherence to the Commission’s quality assurance policies for these reports.
8. In our report, we did not state that the process for the state advisory committees’ operations should become the model for the national office. However, we did examine the Commission’s policies for ensuring the quality of its products and found that the Commission has some policies governing the committees’ work that are more comprehensive than those for national office products.

9. Regardless of whether one agrees or disagrees with the content or quality of the chapters and other material that were removed from the draft Adarand report, we continue to believe that the manner in which they were removed is of concern. For example, although the current Commission voted to approve a report outline in April 2005 that reflected a range of perspectives, the removal of several sections of the draft report shifted the balance towards one perspective. In addition, there was no documentation of the basis for this decision. Afterwards, two Commissioners said that they were unaware of the changes until after the decision had been made, and one of them abstained during the Commission's final vote because he objected to how these changes had been made, even though he said that he agreed with the content of the report.
10. We disagree with the Commissioners' assertion that its new procedural policies for briefings will necessarily provide balance and a variety of perspectives to its briefing panels. The new policy requires the Commissioners to approve briefing topics and panel of speakers at least one month in advance of the briefing. However, as we reported, this new policy does not require that briefing panels be balanced or include a variety of perspectives.
11. In their comments, the Commissioners stated that we criticized the inclusion of political parties in the membership criteria for state advisory committee members, but this is incorrect. In our report, we described the previous and proposed membership criteria, both of which included members' political affiliation. Because the proposed criteria call for each committee to have members of "both" political parties, we also expressed uncertainty about how the Commission would consider candidates who are politically independent and how it would ensure balance in the points of view represented, as required under FACA.
12. According to the Commissioners, our report repeatedly refers to the state advisory committees as the "eyes and ears" of the Commission. This description of the state advisory committees' role is not our term. Rather it appears in the Commission's *State Advisory Committee Handbook* and in the Commission's October 2005 and December 2005 draft strategic plans developed under the current leadership.
13. The Commissioners also stated that our finding that the Commission did not include the state advisory committee members in its strategic planning process was a "ludicrous and unwarranted attack." We disagree with this characterization. Our recommendation is intended

to provide a constructive suggestion for improving the Commission's strategic planning process. At the time of our review, Commission officials told us and the staff of the congressional committees that provide oversight of the Commission that they did not solicit the input of the state advisory committee members in developing the draft strategic plan. In addition, our report recognized that the draft strategic plan had not been completed. If the final plan includes the perspectives of the state advisory committees and better defines their role, it will be a more complete plan. This is the basis for our recommendation.

# Appendix IV: Comments from Commissioner Kirsanow, U.S. Commission on Civil Rights



UNITED STATES COMMISSION ON CIVIL RIGHTS

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April 17, 2006


Robert E. Robertson  
Director  
Education, Workforce and Income Security  
Government Accountability Office  
441 G. Street, NW  
Room 5928  
Washington, DC 20548

RE: GAO Draft Report on State Advisory Committees and Quality Assurance Policies

Mr. Robertson:

Thank you for the opportunity to review and comment on the draft Government Accountability Office report regarding quality assurance policies and the utilization of state advisory committees at the United States Commission on Civil Rights. The Report's findings and recommendations are sound. They provide a framework to improve the Commission's procedures and to enhance the credibility, balance and transparency of the Commission's work product. Though the Commission has implemented many of the GAO's recommendations, the Commission has not updated its strategic plan nor retained the services of an Inspector General, which are both essential administrative tools to keep the Commission's management accountable for results and to ensure the efficient and effective execution of the Commission's vital mission. I look forward to working with my colleagues to implement all of the GAO's recommendations.

Sincerely,

 /caj  
Peter N. Kirsanow  
Commissioner

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# Appendix V: The Commission's Policies and Process for Developing and Approving National Office Products

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In addition to its general policies on quality assurance, Commission policy also requires four independent reviews of its draft products to ensure the accuracy and adequacy of the information in them. These reviews include the following:

1. *Editorial review*:<sup>1</sup> The purpose of this review is to determine the adequacy and accuracy of the substantive information in the draft document, according to the Administrative Manual. This includes conceptual soundness, adherence to Commission policy, quality of research, argumentation, and documentation of major points. However, Commission officials we interviewed generally agreed that the editorial board review more often focused on issues such as grammatical correctness, inconsistencies, and clarity, rather than on substantive issues such as the adequacy of evidence. The Staff Director appoints the members of the editorial review, usually consisting of three staff members. According to the Staff Director, editorial reviewers should be able to provide a fresh perspective, be familiar with the Commission's standards and style manual, have strong editorial and writing skills, and should not work in the same office that wrote the draft product.
2. *Legal sufficiency review*: The purpose of this review, which is conducted by the Office of General Counsel, is to ensure the accurate interpretation and citation of legal materials and compliance with statutory requirements.
3. *"Defame and degrade" review*: The purpose of this review is to ensure that Commission products do not defame or degrade persons named in them.<sup>2</sup> It is performed by the Office of General Counsel concurrently with the legal sufficiency review. Although agencies typically require or have legal sufficiency reviews for their products, it is unusual for an agency to also review its products for their potential to defame or degrade individual persons.
4. *Affected agency review*: The purpose of this review is to provide a government agency or, if appropriate, a nongovernmental organization

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<sup>1</sup>Although this review is described as an Editorial Policy Review in the Commission's policy manual, the Staff Director and others we interviewed told us that it is not a policy review and is usually referred to as the editorial review. Editorial reviews do not apply to transcripts of hearings or briefings.

<sup>2</sup>The Commission requires that a right of response be given to any person if a Commission report tends to defame, degrade, or incriminate that person.

mentioned in the draft report with pertinent sections of the draft for the agency's review on the accuracy of the material contained in them.

The Commission's detailed procedures require the development of interim documents such as concept papers, proposals, outlines, discovery plans, and draft reports.

The Staff Director plays a pivotal role in approving all stages of the products' development, including follow-up plans after a report's issuance. However, until May 2005, the Commissioners had limited involvement in the development of its products: Essentially, Commissioners could approve proposals and design summaries at the beginning and approve final reports at the end. The Commissioners' limited role was a source of considerable concern to some Commissioners, as reported in our 2003 study.<sup>3</sup> This concern led to our recommendation that the Commission provide for increased involvement of the Commissioners in planning and implementation.

In May 2005, the Commission made significant changes to its quality assurance policies by increasing Commissioners' involvement in the development of its national office products. Under these new policies, Commissioners are required to review and approve Commission products at five key stages: (1) proposal and concept paper development, (2) background research and outline development, (3) discovery, (4) draft report, and (5) final report stages.<sup>4</sup> The Commissioners' review and approval at three of these stages are new—background research and outline development, discovery, and draft report stages—and provide Commissioners with considerably greater opportunities to comment on and guide the direction of Commission products than previously. At most of these stages, approval by the majority of the Commissioners is necessary before moving on to the next stage. Under the new policies, the independent reviews—editorial, legal, defame and degrade, and affected agency reviews—occur between the Commissioners' initial and final reviews of the draft product instead of before the Commissioners' review, as was previous practice. The new policy does not require Commissioners'

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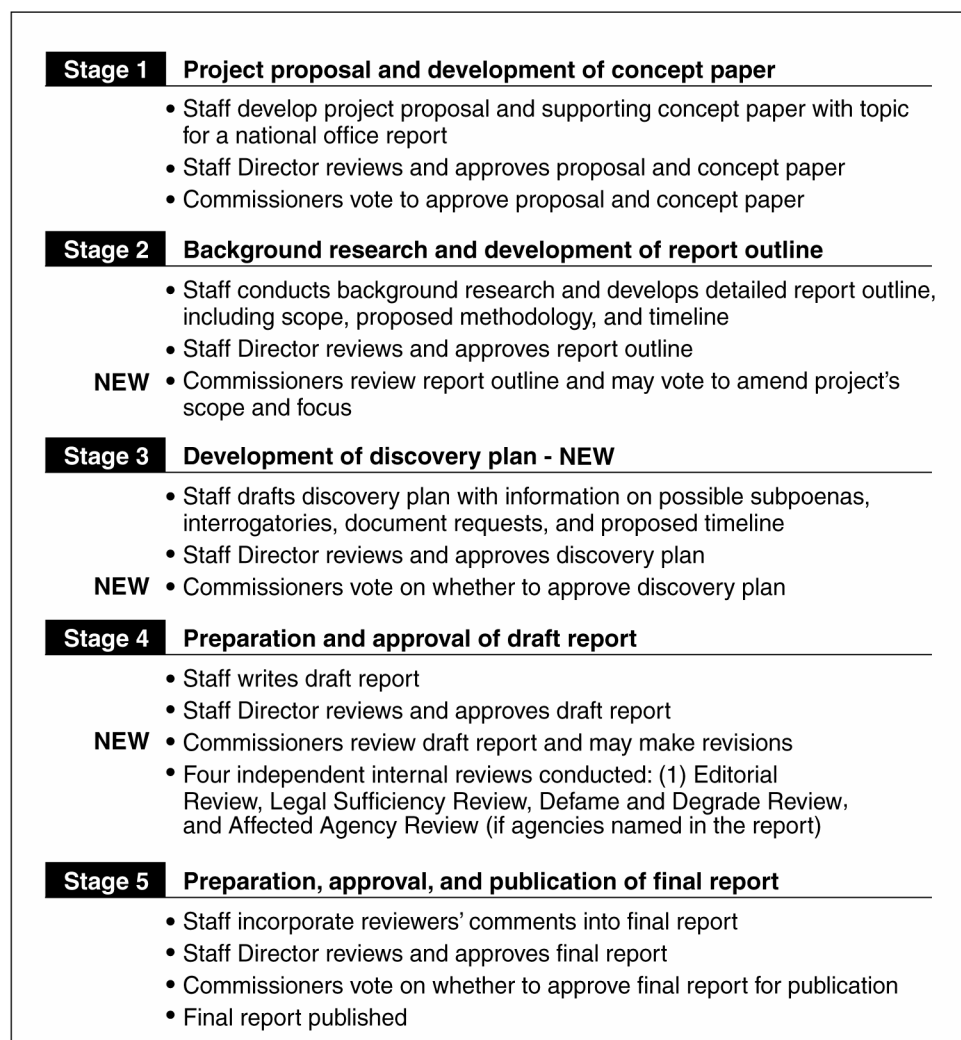
<sup>3</sup>See GAO, *U.S. Commission on Civil Rights: More Operational and Financial Oversight Needed*, [GAO-04-18](#) (Washington, D.C.: Oct. 31, 2003).

<sup>4</sup>In discovery plans, staff provide information on possible subpoenas for hearings, document requests, and interrogatories, which are written questions sent to federal agencies that require a written response and documentation.



votes on draft reports and final reports to occur in a public meeting. The new policies were formally incorporated into the Commission's administrative policy manual in January 2006. (See fig. 2.)

**Figure 2: Process for Developing and Approving National Office Reports**



Source: GAO analysis of U.S. Commission on Civil Rights policy.

In May, 2005, the Commission adopted additional quality assurance policies for national office products that provide them with greater control over the substance of draft products: First, Commissioners can now vote to approve substantive changes to previously approved projects and may reassess priorities if budgetary changes occur during the year. Second,

instead of having to vote on an entire draft of a final report, the Commission may vote on sections, and only portions of the report that receive a majority vote would become part of the final Commission document.

The Commission also agreed to add a policy formally allowing statements of dissent. Commissioners can submit a statement of dissent after a report has been approved, and this dissenting statement can be integrated within the body of the report if the Staff Director and dissenting Commissioner agree. Before this change, there was no written Commission policy on dissenting statements.

The new Commission policies have not been fully implemented for some national office projects that were initiated under the previous Commission before the new policies became effective, according to the Staff Director. These projects include the Commission's 2005 report *Federal Procurement after Adarand* (Washington, D.C.: September 2005), which satisfied the Commission's statutory requirement for that year; its 2005 report, *Funding Federal Civil Rights Enforcement: The President's 2006 Request* (Washington, D.C.: September 2005); and its report on the Voting Rights Act, which is planned for publication in 2006 to satisfy the Commission's annual statutory requirement.

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## **Policies for Briefings and Hearings**

In May 2005, the Commissioners clarified the Commissioners' role in approving briefings and hearings. According to the Commission's new policies, Commissioners must approve briefing topics and the panel of speakers for briefings at a monthly Commission meeting at least 1 month in advance of the briefing itself. In addition, in order to hold a hearing, a majority of the Commission or a majority of the members present at a meeting with a quorum must vote to approve the hearing.

Commission briefings and hearings are usually part of specific national office projects, which include distinct stages such as the concept, proposal, and design. The Commission's Hearing Manual provides detailed administrative and legal procedures for conducting hearings and for posthearing activities. For example, the manual describes the process for selecting team members to prepare for hearings and the process for verifying hearing transcripts following hearings. The manual also notes that the final decision to hold a hearing belongs to the Commissioners. The Commission has not held any hearings since 2002.

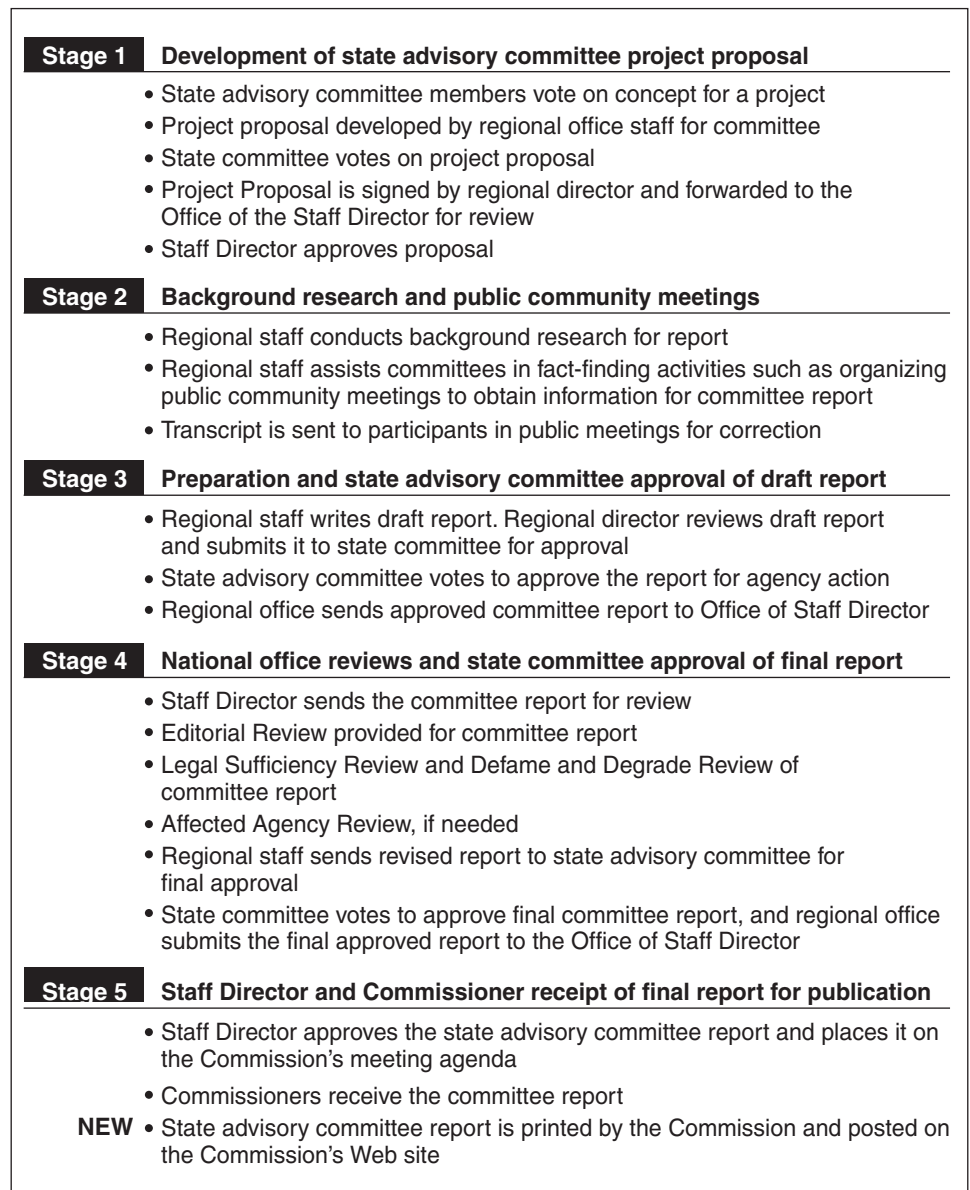
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# Appendix VI: The Commission's Process for Developing and Approving State Advisory Committee Products

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According to the Commission's policies, the state advisory committees provide their advice on civil rights issues by submitting committee reports and other written products to the Commission. The Commission's *Administrative Manual* and *State Advisory Committee Handbook* have policies and procedures for developing and approving these state committee products. State advisory committee members generally propose a civil rights topic and vote to approve it for development. After regional staff researches the topic and drafts a formal proposal, the committee votes to approve it. The approved proposal is then forwarded to the national office for the Staff Director's approval. Following approval of the proposal, the regional staff conducts research, such as conducting interviews and inviting speakers to public meetings in local communities, to help the committee in its fact-finding process. The regional staff also writes a draft report using interviews, background research, and transcripts of the speakers' comments that were made at public community meetings. After the committee reviews and votes on the draft report, the regional director sends the approved committee report to the national office for review, a procedure that is also followed for any dissenting statements. The state advisory committee votes to approve the final report. The regional office sends the final approved committee report to the Commissioners, who, under a new policy approved in February 2006, receive all state advisory committee reports that the Staff Director has approved as having satisfied the procedural and legal criteria for such reports. However, the Commissioners are not asked to accept or reject the committee reports. The Commission also prints all state advisory committee reports that have satisfied the criteria for such reports. (See fig. 3.)

**Figure 3: Process for Developing and Approving State Advisory Committee Products**



Source: GAO analysis of U.S. Commission on Civil Rights policy.

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# Appendix VII: Summary Data on Profiles of the State Advisory Committee Members

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State advisory committee charters provide, among other things, biographical and demographic data on the members of the committees. All of the information presented in the electronic supplement to this report reflects the membership criteria that existed prior to the new criteria proposed in 2005. [For detailed data by state see electronic supplement at <http://www.gao.gov/cgi-bin/getrpt?GAO-06-551SP> .]

As shown by the state charters, state advisory committees are generally composed of a demographically diverse group of individuals. The size of committees varies from 11 to 26 members, though 73 percent of the committees have between 11 and 14 members. Overall, these committees' members are reflective of the state populations they represent, though the committees generally rely more heavily on minority populations, such as persons of color and religious minorities.

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## Age Distribution

State advisory committees tend to have a fairly equal gender distribution, though committee members as compared to 2000 census data are, on the whole, older than the general population. For example, 43 percent of Americans 18 or over are under 40 years old, whereas only 23 percent of advisory committee members are in this age range. This trend is consistent throughout most of the regions considered in this study. Overall, most committee members fall into the 40-59 age range, while approximately a fifth of members are 60 or over, a proportion that closely parallels that of the general population.

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## Racial Distribution

Racial minorities constitute a large percentage of state advisory committee membership, with black members holding the most minority committee positions. While whites constitute 72 percent of the nation's population, white committee members hold only 35 percent of committee positions nationwide. Black members are the second most populous demographic on the committees, constituting 29 percent of state advisory committees. Hispanic members also play a prominent role; 15 percent of committee members across the nation consider themselves Hispanic, a proportion that is comparable to that of the general adult U.S. population. The Midwest has the largest gap in terms of parity—for example, 32 percent of committee members are black, compared to 9 percent of the regional adult population for blacks.

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## Persons with Disabilities

Persons with disabilities are reasonably well represented on the committees. While 19 percent of citizens were identified in the census

nationwide as disabled, these individuals constitute approximately 16 percent of committee members.<sup>1</sup> However, there are wide disparities apparent among committees—for example, while one committee has no representatives with disabilities; several committees have 5 or 6 disabled members.

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### Political and Religious Affiliations

Each committee had at least one Republican and one Democrat. However, committee membership tended to be more Democratic than their respective states' populations; 46 percent of members consider themselves Democrats, in contrast to an estimated 31 percent nationwide. Independent members also constitute a large share of the state advisory committee membership (27 percent), a trend that is most prominent in the Northeast. Religious affiliations also differ among regions and many committee members do not categorize themselves as Catholic, Protestant, or Jewish. In fact, most committee members in the western and northeastern states do not identify with one of the three main religions, while committees in the Midwest and South have mostly Protestant members.

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### Occupations

State advisory committee members hold a variety of occupations, from homemaker to university president. The most common occupations held by committee members include professor/assistant professor, attorney at law, and executive-level positions within nonprofit or governmental entities, such as social services organizations or county commissions. In addition, many committee members are elected officials, teachers, community activists, business owners, students, or private sector employees. Many members participated in organizations such as regional or state civil rights organizations, which promote civil rights advancement.

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<sup>1</sup>The nationwide population rate refers to U. S. citizens 16 to 64 years old.

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Robert E. Robertson, (202) 512-9889 or robertsonr@gao.gov.

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## Staff Acknowledgments

Revae E. Moran, Assistant Director, and Deborah A. Signer, Analyst in Charge, managed all aspects of the assignment. Mary E. Roy made significant contributions to this report and Kyle Browning also provided key assistance in collecting data for the report. In addition, Margaret L. Armen, Richard P. Burkard, Susan C. Bernstein, Jessica A. Lemke, Walter K. Vance, and Monica L. Wolford provided essential legal and technical assistance.

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