



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

MARCH 20, 1985

B-127685

The Honorable William V. Roth, Jr.  
Chairman, Committee on Governmental  
Affairs  
United States Senate

The Honorable John C. Danforth  
Chairman, Subcommittee on Information  
Management and Regulatory Affairs  
Committee on Governmental Affairs  
United States Senate

Subject: Selected Aspects of the Federal Advisory  
Committee Act (GAO/GGD-85-1)

In August 1983 you jointly requested that we review certain aspects of the Federal Advisory Committee Act (FACA). On June 21, 1984, we discussed our findings in testimony before the Subcommittee on Information Management and Regulatory Affairs and subsequently responded to additional questions arising from our review.<sup>1</sup> This report updates and concludes our review by discussing agency views of our analyses and incorporating actions taken by the President and by the agencies in the months following our June 21, 1984, testimony. There have been several developments relating to the five questions in your request.

OVERSIGHT BY THE GENERAL  
SERVICES ADMINISTRATION

In response to your question on the performance of the General Services Administration (GSA) in guiding and managing federal agencies' compliance with the FACA, we reported in our June 21, 1984, testimony that GSA had not carried out all of its

---

<sup>1</sup>Both our testimony and additional responses have been published in Oversight of the Federal Advisory Committee Act, Senate Hearing 98-1037, 98th Congress, 2nd sess., pp. 39-58.

(966152)

statutory oversight responsibilities. We concluded that unless GSA's Committee Management Secretariat (CMS) were upgraded and given more resources, it was unlikely that GSA could manage the advisory committee system as thoroughly as the FACA envisioned.

Both GSA and the Office of Management and Budget (OMB), in letters to us, defended CMS' selective approach to the implementation of its FACA responsibilities. As we noted in our testimony, the limitation on CMS' staff resources has required CMS to set priorities on its responsibilities. GSA stated that it was reviewing the adequacy of CMS' staffing and had tentatively decided to add a full-time staff member to the unit. Further, the recent full-time involvement of the unit's head, and an initiative to automate a substantial portion of CMS' office functions, provide current indications that CMS can more fully perform all of its required functions. For example, GSA informed us that CMS should be able to resume submitting reports to the Congress about follow-up actions resulting from presidential advisory committee recommendations.

Finally, we have analyzed the fiscal year 1983 annual report on advisory committees and find it more complete and informative than earlier annual reports we considered for our testimony. The 1983 report, for example, cited specific committees that reported no accomplishments and yet were recommended by agencies for continuation. In sum, we believe that GSA has chosen reasonable priorities and has progressively improved its overall level of performance.

#### RESPONSE TO AGENCY ADVISORY COMMITTEE RECOMMENDATIONS

In our testimony, we reported that the executive branch was considering an initiative to improve the quality of consideration given to the recommendations of agency advisory committees, and we concluded that additional legislation in this area was not needed. On January 22, 1985, the President issued a memorandum to agency heads urging them to ensure that all their advisory committees are effectively managed and their recommendations evaluated. Since GSA is also addressing this issue, we continue to believe that legislative action is not needed.

#### NONCOMPENSATION POLICY

In our June 21, 1984, testimony on GSA's interim policy that advisory committee members should not be compensated except under special circumstances, we stated that indications up to that time caused us to believe that the policy should not be issued in final form and that the decision of whether to compensate members should be left to agency heads. GSA formulated this policy in support of the President's commitment to promote

30728

B-127685

opinion that the court ruling allows a major potential loophole in the act: it opens the way for much committee activity to circumvent public accountability. We suggested that the Congress may want to consider amending the FACA to clarify that all subcommittees, not just those that provide advice directly to a federal official, are subject to the FACA.

After our testimony, GSA informed us that its proposed final rule has a new section devoted to this issue. However, as of February 1985 the rule had not been published.

- - - - -

In summary, and as we expressed in our testimony last June, we believe that none of the problems we identified warrant a major overhaul of the act; they can be resolved for the most part through administrative adjustments. We will be pleased to provide any further assistance you may request in your oversight of the Federal Advisory Committee Act.

As arranged with your offices, we are sending copies of this report to the Acting Administrator, General Services Administration; the Director, Office of Management and Budget; the Secretaries, Health and Human Services and Education; the Director, National Science Foundation; and the Acting Chairman, National Endowment for the Humanities. Copies will also be available to other interested parties on request.

*W. J. Anderson*

William J. Anderson  
Director

voluntarism. Except for GSA, each of the agencies that reviewed our analyses on this issue--OMB, the Departments of Health and Human Services and Education, the National Science Foundation (NSF), and the National Endowment for the Humanities (NEH)--agreed with our conclusion. OMB noted that it especially concurred in the conclusion that compensation for committee members should be left to agency discretion. "In fact," wrote OMB on November 20, 1984, "we have so advised the Administrator of General Services and expect him to issue revised regulations to that effect shortly." The head of CMS, however, said the compensation issue probably will not be resolved until a new GSA Administrator is confirmed.

#### CONFLICT OF INTEREST CONTROLS

Pursuant to your request we reviewed conflict of interest controls on members of advisory committees at five agencies. We reported in our testimony that two of these agencies--the Food and Drug Administration and the Department of Education--not only had sufficient conflict of interest guidelines in place but also implemented them thoroughly. We also found adequate guidelines and procedures in place at the National Institutes of Health (NIH), NEH, and NSF; but we identified some situations in these agencies where apparent conflicts of interest were not identified, resolved, or documented as prescribed by the guidelines.

In response to our findings, NEH and NSF acknowledged that the appearances of conflict we found could have been prevented by stricter adherence to their own guidelines and procedures. NIH, however, sent us documentation that demonstrated, it believed, that most of the apparent conflicts we found were resolved at the time of the meetings in question. After discussing this with NIH's committee management officer, we concluded that four of the eight apparent conflicts we identified had been resolved, although documentation of this had not been provided to us during our review.

#### COVERAGE OF SUBCOMMITTEES

You asked us to assess the effect of the 1983 court ruling in the case of National Anti-Hunger Coalition v. Executive Committee of the President's Private Sector Survey on Cost Control (557 F. Supp. 524 (D.D.C. 1983), aff'd, 711 F. 2d 1071 (D. Cir. 1983)), which held that the FACA covers only those advisory committee subcommittees or subgroups that provide advice and recommendations directly to a federal official. Since most committee subgroups report to a parent committee instead of directly to a federal official, we expressed our