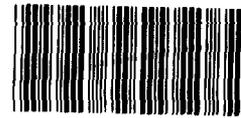


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Federal Advisory Committees:
GSA's Management Oversight and GAO Comments on Proposed
Legislative Amendments (S. 2721)

Statement of
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Before the
Committee on Governmental Affairs
United States Senate



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FEDERAL ADVISORY COMMITTEES:
GSA'S MANAGEMENT OVERSIGHT AND
GAO COMMENTS ON PROPOSED
LEGISLATIVE AMENDMENTS (S. 2721)

Summary of Statement by
Richard L. Fogel
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When enacting the Federal Advisory Committee Act in 1972, Congress recognized that, properly organized and managed, advisory committees can provide an appropriate and useful source of information in the public policymaking process. During fiscal year 1987, about 1,000 advisory committees were in operation.

GSA has a role in assuring, from a governmentwide perspective, that federal agencies organize, operate, and terminate advisory committees in accordance with the act. GAO found that GSA had not carried out all of its responsibilities. For example, GSA had not

- made required annual comprehensive reviews of advisory committee activities, or
- prepared required reports on the status of recommendations made by Presidential advisory committees.

GSA cited a variety of reasons for not having fully executed its advisory committee responsibilities but believes that it now has the staff capability necessary to accomplish the functions in the future.

S. 2721 contains provisions which GAO believes can strengthen GSA's role in managing advisory committees governmentwide. In general, GAO's reviews of advisory committee activities support the need for the amendments, with some modifications, proposed in S. 2721.

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear before the Committee to discuss our findings on how well the General Services Administration has carried out its responsibilities under the Federal Advisory Committee Act (FACA). At the Committee's request, we recently completed a review of GSA's management of advisory committee activities, and we have made other reviews of specific advisory committees' operations.

You also asked for our views on the Federal Advisory Committee Amendments Act (S. 2721). My statement contains several comments and suggestions on the proposed amendments that our work suggests may be appropriate for the Committee to consider.

Congress has recognized that, when properly organized and managed, advisory committees can provide a useful source of expertise and advice. When enacting FACA in 1972, however, Congress expressed its concern about the proliferation and lack of effective management of advisory committees. More than 1,400 advisory committees existed in 1972. The number dropped to about 1,000 in 1979 and has since remained at approximately that level. Fifty-seven departments and agencies use and/or support advisory committees, and two departments (Health and Human Services and Interior) accounted for 425 (43 percent) of the 992 committees in existence during fiscal year 1987.

FACA established a Committee Management Secretariat, now located in GSA, to oversee advisory committee activities. We found that functions assigned to the Secretariat, such as making comprehensive annual reviews of committee activities and describing the actions taken in response to recommendations by Presidential advisory committees, have not been accomplished. GSA cited a variety of reasons for not fully implementing its FACA responsibilities, but said that it will do so in the future. S. 2721 contains provisions which we believe will help strengthen the management of advisory committees governmentwide and will appropriately clarify and supplement many FACA provisions.

ADVISORY COMMITTEE MANAGEMENT

Our report on GSA's performance in executing its FACA responsibilities is being released today. I request the Committee's permission to have the report, in its entirety, made a part of the hearing record, and I will highlight our principal findings.

Let me first put into perspective GSA's role in administering FACA. Under FACA, the ultimate responsibility for creating, reviewing, and terminating an advisory committee rests with the authority that perceived the need to establish the committee. This could be the President, an agency head, or Congress. GSA reviews all charters for advisory committees proposed to be

established by agencies and receives copies of charters for advisory committees that are created by statute and Presidential order. When an agency head proposes to establish an advisory committee, FACA requires that GSA be consulted. GSA shares its views with the agency involved, but the agency head has the final authority for creating the advisory committee.

Along with its consultation role, the Committee Management Secretariat in GSA is responsible for

- providing the agencies with uniform guidance on advisory committee activities,
- making comprehensive annual reviews of each committee's activities and recommending to the President, the agency head involved, and/or Congress any actions the GSA Administrator deems appropriate,
- preparing for the President annual reports to Congress on the activities, status, and changes in the composition of advisory committees, and
- preparing follow-up reports on the status of recommendations made by Presidential advisory committees.

GSA's Secretariat had focused its attention primarily on consulting with agencies and preparing the President's annual report. It assigned a lower priority to accomplishing the other functions.

Specifically, GSA had not made comprehensive reviews of advisory committees to determine, among other things, whether unneeded committees exist and whether GSA should recommend to Congress, the President, and agency heads that such committees be abolished. Rather, GSA had relied on the agencies responsible for advisory committees to report on the need for them. The reports submitted often showed that advisory committees were not holding meetings and were incurring costs, yet GSA did not question the need to continue them.

For example, 86 advisory committees were reported as having no meetings for up to 2 years (fiscal years 1986 and 1987). The 86 committees incurred costs totaling \$535,000 during fiscal year 1987, about 78 percent of which was for federal staff compensation. The agency reports discussed the reason 60 committees had not met, citing such things as 20 committees were newly established, 16 committees had no agenda items to consider, and other committees experienced delays in appointing members, had no chairpersons, or lacked funding. Agencies responsible for the remaining 26 advisory committees did not report any reasons why the committees were inactive.

GSA did not obtain additional information on why the committees did not meet and did not question the need for them.

Similarly, in its consultation role, GSA concurred in establishing advisory committees without having obtained complete charters and justifications for the committees. The agencies' submissions to GSA were often missing information that FACA or GSA regulations require to be provided and that GSA said it needs to determine FACA compliance. Of the 114 proposed charters sent to GSA from October 1986 to May 1988, 42 did not contain certain items of information required, such as estimated annual operating costs. GSA concurred in establishing all 114 advisory committees.

GSA has prepared the President's annual reports to Congress required by FACA. While the reports have contained the information specified in FACA, they were not submitted to the President in time for them to be forwarded to Congress by December 31 as required. Also, the reports submitted in recent years have included less analysis than some earlier reports. For example, the reports for 1982-1984 presented extensive analytical data on advisory committees' costs; the 1985 report included less cost analysis; and the 1986 and 1987 reports did not contain any of this kind of data that could be useful in identifying trends and possible areas in need of management attention.

The follow-up reports required by FACA on the status of recommendations made by Presidential advisory committees have not been sent to Congress since the early 1980s. GSA is responsible for preparing the reports.

According to GSA, it had not fully implemented its FACA responsibilities for a variety of reasons, including a lack of staff capability, inadequate information, and organizational and management changes.

You asked for our views on how the Committee can assure the Secretariat functions are effectively carried out. Specifically, you questioned whether GSA may need additional staff resources for this purpose and whether the Secretariat should possibly be in an agency other than GSA.

Because GSA had not implemented many of its FACA functions and had not developed a plan for doing so, it is difficult to say whether it has adequate resources. We did note that GSA had increased the size of the Secretariat staff since 1984.

We previously testified before a subcommittee of this Committee that GSA's Committee Management Secretariat was not carrying out many of its responsibilities.¹ At that time, the Secretariat

¹ Statement of Rosslyn S. Kleeman, Associate Director, General Government Division, before the Subcommittee on Information Management, Committee on Governmental Affairs, United States Senate, June 21, 1984.

consisted of two and a fraction full-time professional staff members. The number had increased to five professional staff as of September 1988. GSA believes this staffing level is sufficient to handle the FACA requirements.

We do not believe that organizational changes, such as moving the Secretariat functions to another agency, would necessarily correct the problems we found. There is a need, however, for more attention by top-level GSA management on developing plans and appropriately directing its resources to accomplish the required FACA functions. In other words, if GSA believes it now has the staff resources it needs to do all FACA functions, its objective must be to see that the functions, in fact, are accomplished.

COMMENTS ON S. 2721

Our reviews of FACA's administration and implementation generally support the amendments proposed in S. 2721. Our comments are limited to those provisions of S. 2721 that affect matters addressed in our prior reviews.

GSA's Responsibilities

S. 2721 would require that, annually, the President submit a summary report to Congress on the activities, status, and changes in the composition of advisory committees and that agency heads

submit separate detailed reports to Congress on each advisory committee. The amendment will give GSA more time to analyze advisory committees from a governmentwide perspective. We believe the results of such analyses, provided as part of the President's annual report, would be useful to Congress in carrying out its oversight responsibilities.

S. 2721 would also change the requirement for GSA's comprehensive reviews of each advisory committee from annual to periodic reviews. We agree that GSA should be allowed to use some discretion in scheduling the frequency with which each committee is reviewed.

S. 2721 does not require GSA to report the number and results of the advisory committee reviews it completes. Since GSA had not done the required reviews previously, we believe that the information on the number and results of the reviews should be made a part of the President's annual report to Congress required by FACA.

FACA does not give GSA any recourse when it disagrees with a committee's establishment, management, or termination. S. 2721 would continue to give agency heads final decision authority, but it would also allow GSA to make known to Congress and the public any areas of disagreement by requiring a description of the disagreement in the committee's charter or in the President's

annual report to Congress. We believe such disclosure is appropriate and needed.

Subcommittees and Subgroups

S. 2721 would further define "advisory committees" by separately defining subcommittees and subgroups subject to FACA coverage. We understand that an objective is to close a loophole in FACA, discussed in our June 1984 testimony, wherein subgroups providing advice and recommendations to parent committees, rather than to a federal official, escape FACA coverage. The proposed amendment would not eliminate this loophole, however, because it would still limit FACA coverage to only those subgroups that provide collective advice and recommendations "directly to an agency or federal official."

Most committee subgroups report to a parent committee and not directly to a federal official. To ensure that FACA coverage extends to all committee subgroups that perform substantive committee activity, the definition of subcommittee and subgroups should explicitly include those entities providing collective advice and recommendations to a parent committee as well as to a federal official.

Definition of Meetings

S. 2721 would amend FACA by defining a "meeting" to include any interaction between a majority of advisory committee members at which the substantive business of the committee is discussed. FACA requires that advisory committee meetings must be preceded by public notice, made open to the public unless closed under specific exemptions, and be supported by certified minutes. However, FACA presently lacks a definition of the term "meeting" and therefore agencies and advisory committees can encounter difficulties in complying with these FACA requirements. We believe that the proposed definition will provide agencies and committees with needed guidance as to which interactions among committee members constitute a meeting for FACA purposes.

Also, S. 2721 would provide that advisory committees, (1) to the greatest extent practicable, conduct all business furthering the mandate of the committee through meetings, and (2) may report advice or recommendations to a federal official only after a meeting at which the advice or recommendations are approved by a majority of the members. These revisions to FACA would help assure that advisory committee activities are open to public scrutiny. Presently, FACA requires that all meetings must be open to the public unless closed pursuant to specific exemptions but does not provide that advisory committee business should be conducted through meetings.

Preventing Conflicts of Interest

S. 2721 establishes new requirements aimed at preventing conflicts of interest on the part of advisory committee members. Prospective members would be required to file financial disclosure statements before they are appointed or begin committee service. The statements would be reviewed for apparent or potential conflicts, and any conflicts discovered would have to be resolved.

We believe the requirement for early screening and resolution of conflicts of interests is needed. Resolving conflicts before advisory committees begin business is important to ensuring that committees operate as independently as possible and that committee members serving as government employees are protected from the risk of taking actions which could constitute criminal offenses under the federal conflict of interest laws.

Although we support the thrust of this provision, we are concerned that the requirement as proposed extends to all prospective advisory committee members, whether or not they are designated as government employees. Generally, individuals who are expected to serve the government in an independent capacity are appointed as regular or special government employees; and by virtue of such appointment, they are subject to conflict of interest laws. In contrast, individuals who are invited to represent private sector interests before the government are

generally not considered government employees subject to these laws.

We question the need to require the routine collection of financial information from prospective members who will not serve as government employees since they are not subject to the conflict of interest laws. Such an inflexible requirement could have the effect of deterring some individuals from providing service to the government. If the requirement is to apply to all persons serving on advisory committees, we recommend the addition of a provision permitting agency heads to waive the requirement, as they deem appropriate, for non-government employees.

Another S. 2721 provision would require advisory committee management officers to oversee and provide counseling on ethics issues and financial disclosure obligations. While we believe that committee management officers would function more appropriately as liaisons between committee members and agency ethics counselors, rather than ethics counselors themselves, we support the oversight and monitoring envisioned in this proposed amendment.

Balanced Membership

Several provisions in S. 2721 address balanced membership on advisory committees. The existing provisions of FACA require that advisory committee membership must ". . . be fairly balanced in terms of points of view represented and the functions to be performed . . ." but neither the act nor GSA regulations specify how the balanced membership requirement is to be met.

We believe that the proposed amendment to the findings and purposes section adding a precatory statement of factors to be considered in selecting committee membership provides useful guidance for achieving balance. At the same time, S. 2721 states the operative requirement for achieving balance: Congress, the President, and agencies must prescribe in advance of committees' establishment the specific factors to be considered in achieving balanced committee membership. These provisions would give authorities establishing committees flexibility to structure committee membership to fit the functions of the particular committee involved, while also providing accountability for the factors used in selecting advisory committee members.

That concludes my prepared statement. I will be pleased to answer any questions you may have.