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FEDERAL ADVISORY COMMITTEE ACT

Advisory Committee Process Appears to Be Working, but Some Concerns Exist

Statement by L. Nye Stevens
Director, Federal Management and Workforce Issues
General Government Division



Federal Advisory Committee Act: Advisory Committee Process Appears to Be Working, but Some Concerns Exist

Federal agencies often receive advice from advisory committees on a range of issues, including policy and scientific matters. In fiscal year 1997, federal agencies could turn to over 900 advisory committees for advice. Congress enacted the Federal Advisory Committee Act (FACA) to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open to the public as is feasible, and (3) Congress is regularly informed of the committees' activities.

GAO has issued two recent reports relating to FACA. The most recent of these reports, which is being released today, summarized the views of federal advisory committee members and federal agencies on specific FACA matters. The other report, issued in June 1998, assessed the General Services Administration's (GSA) efforts in carrying out its oversight responsibilities under FACA.

The information from these two reports led GAO to make three general observations.

1. Advisory committees appear to be adhering to the requirements of FACA and Executive Order 12838, which led to the establishment of ceilings for each agency on the number of discretionary advisory committees. These requirements do not appear to be overly burdensome to agencies.
2. Although the responses of committee members and agencies portrayed a more positive than negative image of FACA, their responses did raise concerns and issues that the Subcommittee may wish to explore in its consideration of FACA. For example, there appears to be some concern among agencies about the possibility of being sued for noncompliance with FACA if they obtain input from parties who are outside of the agency and its advisory committees.
3. GSA's Committee Management Secretariat has fallen short of fulfilling its FACA oversight responsibilities. For example, GSA has not submitted its annual reports to the President in time for him to meet the December 31 reporting date to Congress in 8 of the last 10 annual cycles. Further, GSA did not ensure that advisory committees were established with complete charters and justification letters. Thirty-six percent of the 203 advisory committee charters and 38 percent of the 107 justification letters from October 1996 through July 1997 that we reviewed were missing one or more items required by FACA or GSA regulations. GSA said it will take immediate action to improve its oversight.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on federal advisory committees as the Subcommittee explores possible changes to the Federal Advisory Committee Act (FACA) and the advisory committee process. Last November we presented to the Subcommittee an overview of advisory committees since 1993.¹ We have issued two reports on FACA since then on issues that you, Mr. Chairman, and Senator John Glenn asked us to examine. The most recent of these reports, which is being released today, gathered the views of federal advisory committee members and federal agencies on specific FACA matters.² The other report, which was issued last month, assessed the General Services Administration's (GSA) efforts in carrying out its oversight responsibilities under FACA.³ My statement today will focus on these two reports, as you requested.

As you are well aware, federal agencies often receive advice from advisory committees, and this advice covers a range of topics and issues, including national policy and scientific matters. In fiscal year 1997, federal agencies could turn to 963 advisory committees for advice. Most of these committees were discretionary; that is, they were created by agencies acting under their own authority or were authorized—but not mandated—by Congress. The rest were mandated by Congress or the President.

Congress has long recognized the importance of federal agencies receiving advice from knowledgeable individuals outside of the federal bureaucracy. Nevertheless, Congress enacted FACA in 1972 out of concern that federal advisory committees were proliferating without adequate review, oversight, or accountability. FACA provisions are intended to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open to the public as is feasible, and (3) Congress is regularly informed of the committees' activities.

To help meet these objectives, FACA directed that a Committee Management Secretariat, which is now located at GSA, be established and

¹Federal Advisory Committee Act: Overview of Advisory Committees Since 1993 (GAO/T-GGD-98-24, Nov. 5, 1997).

²Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues (GAO/GGD-98-147, July 9, 1998).

³Federal Advisory Committee Act: General Services Administration's Oversight of Advisory Committees (GAO/GGD-98-124, June 15, 1998).

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responsible for all matters relating to advisory committees. GSA has developed guidelines to assist agencies in implementing FACA; has provided training to agency officials; and was instrumental in creating, and has collaborated with, the Interagency Committee on Federal Advisory Committee Management.

Although FACA was enacted to temper the growth in advisory committees, the number of advisory committees grew steadily from fiscal year 1988 until fiscal year 1993, when the number totaled 1,305. In February 1993, the President issued Executive Order 12838, which directed agencies to reduce the number of discretionary advisory committees by at least one-third by the end of fiscal year 1993. Under authority provided by the executive order, the Office of Management and Budget (OMB) established ceilings for each agency on its maximum allowable number of discretionary committees. Subsequently, the number of advisory committees declined from 1,305 in 1993 to 963 in fiscal year 1997, the most recent fiscal year for which complete data are available.

Although the number of advisory committees has decreased, the average number of members per committee and the average cost per committee have increased. On average, between fiscal years 1988 and 1997, the number of members per advisory committee increased from about 21 to 38, and the cost per advisory committee increased from \$90,816 to \$184,868. In constant 1988 dollars, the average cost per advisory committee increased from \$90,816 to \$140,870 over the same period. A total of 36,586 individuals served as members of the 963 committees in fiscal year 1997. According to data published by GSA, the cost to operate the 963 committees last fiscal year was about \$178 million.

GAO's Two Recent FACA-Related Reports

To gather the views of advisory committee members on committee operations for our report being released today, we surveyed a statistically representative sample of advisory committee members. The questionnaire responses we received from 607 members are generalizable to the approximately 28,500 committee members for whom we had names and addresses. We also sent a questionnaire to 19 federal agencies to obtain their views on FACA requirements, and all 19 completed the questionnaire. These 19 agencies account for about 90 percent of the federal advisory committees.

To determine for our June 1998 report whether GSA's Committee Management Secretariat was carrying out its FACA responsibilities, we

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reviewed committee charters and justification letters, annual reports for advisory committees, and other pertinent documents; applicable laws and regulations; and GSA's guidance to federal agencies. We also interviewed Committee Management Secretariat officials at GSA and committee management officers at nine agencies.

The information from these two reports led us to three general observations.

1. Advisory committees appear to be adhering to the requirements of FACA and Executive Order 12838. These requirements do not appear to be overly burdensome to agencies.
2. Concerns surfaced about certain advisory committee requirements that the Subcommittee may wish to explore in its consideration of FACA.
3. GSA has fallen short of fulfilling its FACA oversight responsibilities. In response to our June 1998 report, GSA said it will take immediate action to improve its oversight.

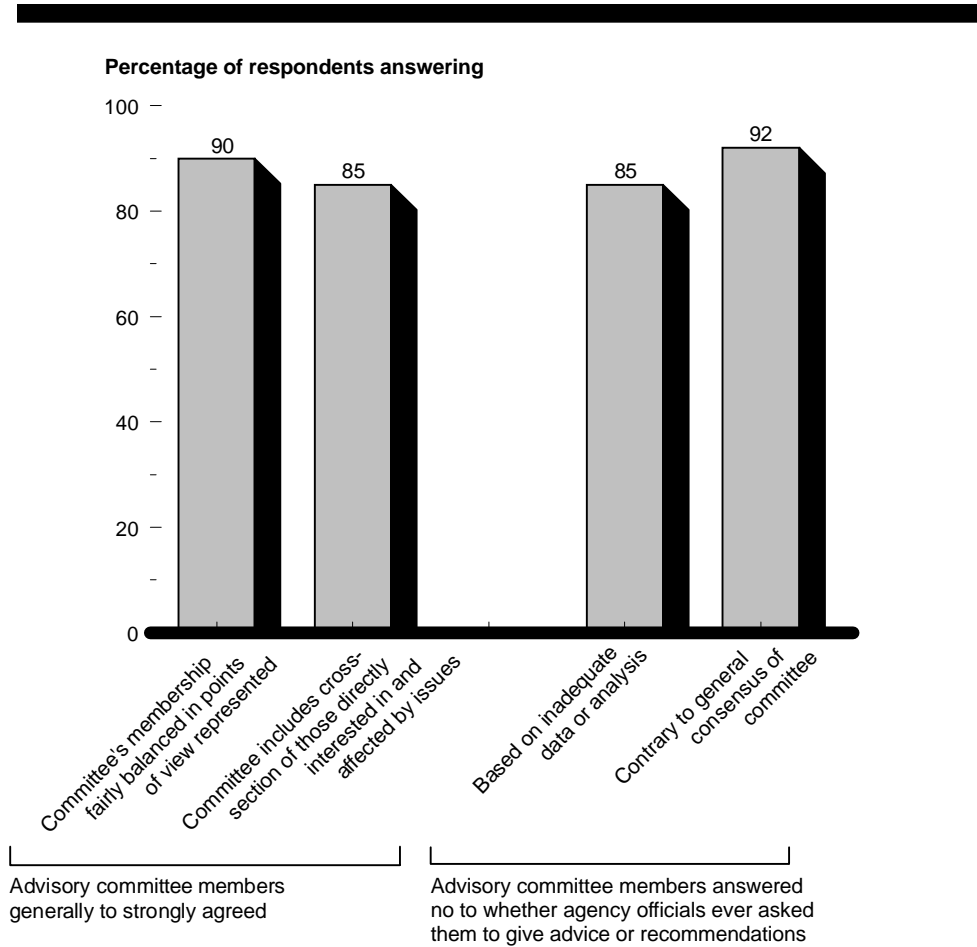
I will turn now to each of these observations in more detail. In examining the responses of advisory committee members to our questionnaire, we determined the overall response to each question and, in addition, separately reported the responses of peer review panel members and general advisory committee members where appropriate.

Advisory Committee Requirements and Process Were Viewed in a Positive Light Overall

The answers the committee members gave to our survey showed that, generally, they believed that their advisory committees were providing balanced and independent advice and recommendations. The committee members also reported that they believed their committees had a clear and worthwhile purpose and that the committees' advice and recommendations were consistent with that purpose and considered by the agencies. These responses are shown graphically in the following two figures, which group together by topic a number of the specific questions that we asked committee members.

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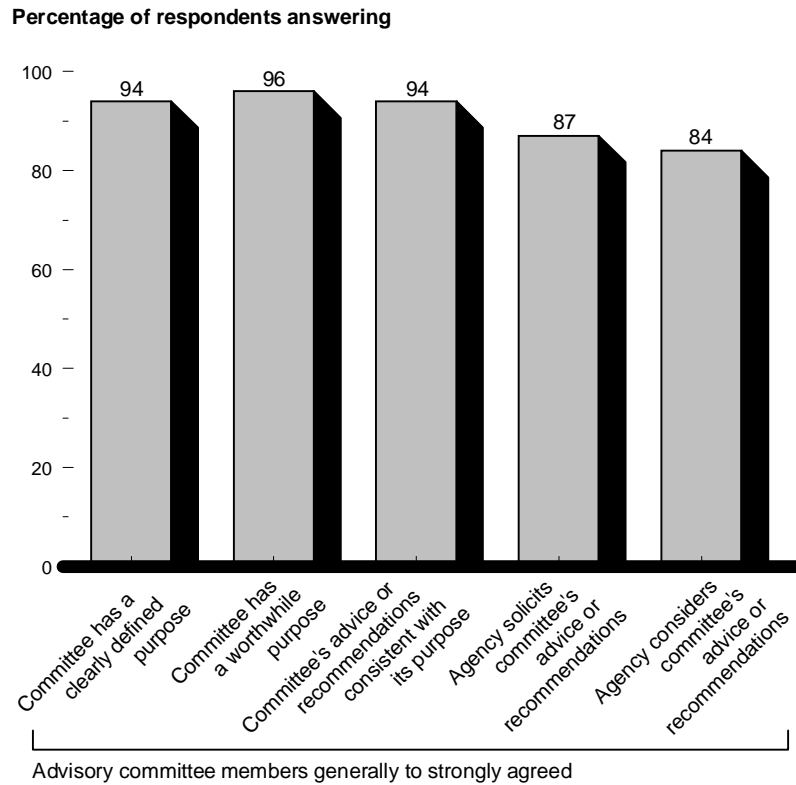
**Figure 1: Advisory Committees
Providing Balanced and Independent
Advice and Recommendations**



Source: Responses from surveyed advisory committee members.

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**Figure 2: Advisory Committees
Serving Useful Purpose**

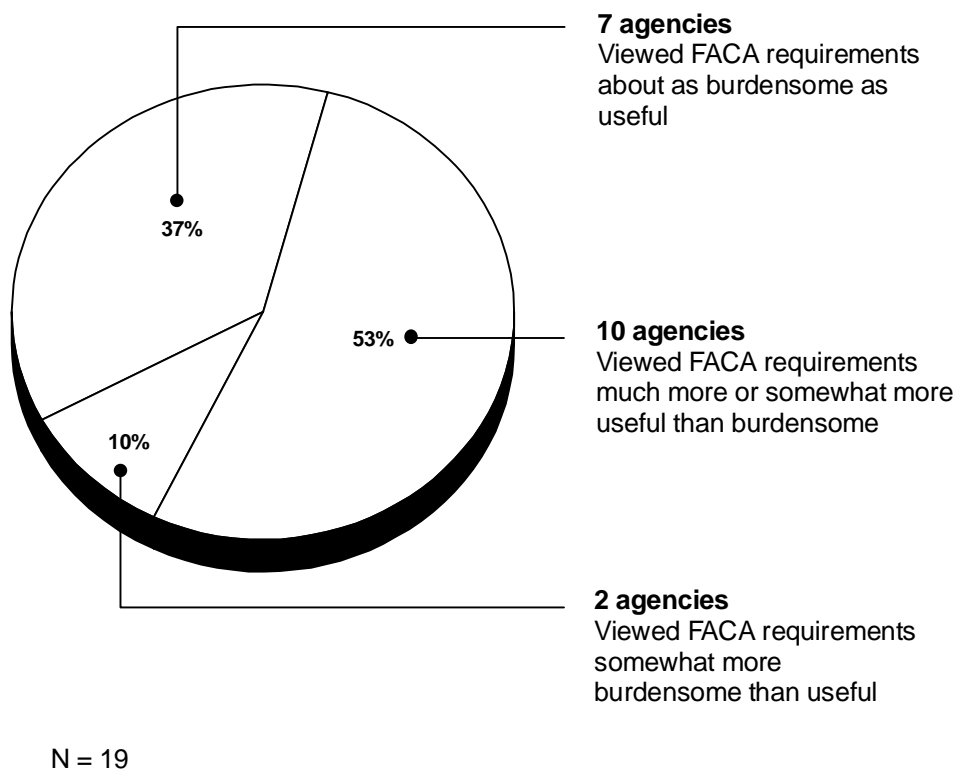


Source: Responses from surveyed advisory committee members.

FACA sets out requirements for agencies and advisory committees to follow, and we asked the 19 agencies about their perceptions of how useful or burdensome those requirements were. With regard to the requirements in general, figure 3 shows the range of agencies' responses. The largest number of agencies considered the requirements to be useful.

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Figure 3: Agencies' Views of FACA Requirements Overall



Source: Responses from surveyed agencies.

In addition to their overall characterizations, the agencies also rated how useful and burdensome they found each of 17 FACA requirements. A majority of the agencies (generally more than 10 agencies) rated 14 requirements to be useful to a moderate, great, or very great extent. In contrast, only four requirements were considered to be especially burdensome by a majority of the agencies. These same four were also among those rated as useful to a moderate or greater extent.

We also questioned the agencies about the impact of FACA requirements on their receiving input from the public and about the impact of FACA requirements and Executive Order 12838 on their forming new advisory committees, and their responses were generally positive. We asked the

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agencies whether FACA had prohibited them from receiving or soliciting input on issues or concerns from public groups (other than from advisory committees). Most of the agencies—16 of the 19—answered no.

There has been some question about whether the possibility of litigation over compliance with FACA requirements has inhibited agencies from forming new advisory committees. The most frequent response—received from 14 of the 19 agencies—was that this possibility did not inhibit the formation of new committees.

As I noted earlier, Executive Order 12838 established ceilings for each agency on its maximum allowable number of discretionary advisory committees. A majority of the agencies (12) said that the ceilings did not deter them from seeking to establish new advisory committees. Seven agencies, however, said the ceilings did deter them. An agency could request approval from OMB to establish a committee that would place it over its ceiling. Two of the seven agencies had done so during fiscal years 1995-1997, and OMB approved their requests.

Concerns Surfaced About Certain Advisory Committee Requirements

Although committee members and agencies responding to our questionnaires generally provided a more positive than negative image of FACA, their responses also pointed to concerns and issues that the Subcommittee may wish to explore in its consideration of FACA. We list these concerns in no particular order of priority.

- About 13 percent of the general advisory committee members said that agency officials had asked their advisory committees on occasion to give advice or make recommendations on the basis of inadequate data or analysis.
- A majority of the 19 agencies reported that two FACA requirements—preparing an annual report on closed advisory committee meetings and filing advisory committee reports with the Library of Congress—required little labor on their part but offered little value, at least in the agencies' estimation.
- Seven agencies offered suggestions for changing the FACA requirements, including two that suggested that rechartering be required every 5 years instead of the current 2 year cycle.
- Under FACA, peer review panels are treated as advisory committees, and six agencies indicated that they used peer review panels. Five of these agencies said that panels should be exempt from some, most, or all FACA requirements.

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- Agencies identified 26 congressionally mandated committees that they believed should be terminated.
- GSA regulations allow agencies to determine whether members of the public may speak at advisory committee meetings. (Members of the public are allowed to submit their remarks in writing.) All 19 agencies allowed members of the public to speak before at least some advisory committees. However, agencies placed restrictions on the public's ability to speak at committee meetings (e.g., only if time permitted), and the restrictions varied from agency to agency.
- Advisory committees may also have subcommittees. Meetings of subcommittees may be exempt from FACA requirements, and agencies reported that about 27 percent of the meetings subcommittees held during fiscal year 1997 were not covered by FACA. For these meetings, the subcommittees may voluntarily follow FACA requirements. However, the extent to which the requirements are followed appears to vary. For example, of the eight agencies that responded, only two said Federal Register notices were given for all or most subcommittee meetings. Five said a designated federal officer attended all or most subcommittee meetings.
- Although 16 agencies said FACA had not prohibited them from soliciting or receiving input from the public, 3 agencies said it had prohibited them. One agency said that it had to limit its prior practice of forming working groups or task forces to address specific local projects or programs. Another agency said that FACA had made it more cumbersome to seek citizen input because of the staff time required to complete FACA paperwork. And, the third agency said that solicitation of a consensus opinion from a task force or working group could lead to that task force or working group being considered subject to FACA.
- Finally, there appears to be some concern among agencies about the possibility of being sued for noncompliance with FACA if they obtain input from parties who are outside of the agency and its advisory committees. Although 10 agencies said the possibility of such litigation has inhibited them to little or no extent from obtaining outside input independent of FACA, 8 agencies said that it has inhibited them to some, a moderate, or very great extent.

The Director of GSA's Committee Management Secretariat said that the responses from committee members and agencies had suggested areas that should be examined further, several of which GSA already had been examining and others that GSA plans to examine.

GSA Has Fallen Short of Fulfilling Its FACA Oversight Responsibilities

Although the GSA Committee Management Secretariat does not have authority to stop the formation or continuation of an advisory committee, FACA and GSA regulations assign it certain responsibilities for overseeing the federal advisory committee program. These responsibilities include

- ensuring that advisory committees are established with complete charters and justification letters;
- conducting a comprehensive review annually to independently assess whether each advisory committee should be continued, merged, or terminated;
- submitting information to the President in time to meet the statutory due date for the President's annual report to Congress on advisory committees; and
- ensuring that agencies provide Congress with follow-up reports on recommendations made by presidential advisory committees.

We concluded in our June report that the Secretariat had not carried out each of these four responsibilities. For example, even though all charters and justification letters had been reviewed by the Secretariat, 36 percent of the 203 charters and 38 percent of the 107 letters from October 1996 through July 1997 that we reviewed were missing one or more items required by FACA or GSA regulations. When reviewing the advisory committees' annual reports for fiscal year 1996, the Secretariat did not independently assess whether committees should be continued, merged, or terminated. For 8 of the last 10 annual presidential reports on advisory committees, GSA submitted its report to the President after the President's report was due to Congress. The Secretariat did not ensure that agencies prepared for Congress the 13 follow-up reports required on recommendations made by presidential advisory committees in fiscal years 1995 and 1996, and in fact none had been prepared. Based on our findings, we recommended that the GSA Administrator direct the Committee Management Secretariat to fully carry out the responsibilities assigned to it by FACA in a timely and accurate manner.

In response to that recommendation, the GSA Administrator said the Associate Administrator for Governmentwide Policy will ensure that the Committee Management Secretariat takes immediate and appropriate action to implement our recommendation.

In summary, although agencies reported that they have benefited from FACA requirements in administering their advisory committee programs,

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there appear to be areas in which those requirements warrant a fresh look. In addition, there is room for GSA's Committee Management Secretariat to improve its fulfillment of its FACA oversight responsibilities. GSA says that it is acting on both fronts. Still, the Subcommittee may wish to explore the concerns surfaced in our reports as it considers ways to improve FACA.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions you or other Members of the Subcommittee may have.

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