

GAO

Testimony

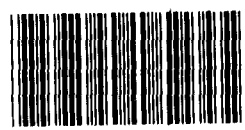
135601

For Release
on Delivery
Expected at
2:00 P.M. EST
Tuesday
April 19, 1988

DOD Compliance With The Federal Advisory Committee Act

Statement
Rosslyn S. Kleeman
Senior Associate Director
General Government Division

Before the
Committee on Governmental Affairs
United States Senate



135601

041914 - 135601

DOD COMPLIANCE WITH THE
FEDERAL ADVISORY COMMITTEE ACT

Summary Statement by
Rosslyn S. Kleeman
Senior Associate Director

The General Accounting Office and other organizations earlier made many recommendations to ensure that DOD complies with the Federal Advisory Committee Act. DOD has taken many of the steps recommended. We believe DOD is generally complying with the act. However, some key steps still have not been implemented and should be. Specifically, the advisory committees need to document the reasons why individuals were selected for advisory committees and panels in order to demonstrate how they went about achieving the balanced membership required in the act. We believe they could use guidance in making selections to achieve balance. Also, there is a need to:

- Document reviews of financial disclosure statements made when advisory committee members are assigned to panels.

- Regularly review the committees' operations and assure that when deficiencies are noted, they are reported and corrected.

The Navy implemented our recommendation that it appoint committee members as special government employees, rather than considering them grantee employees. The members are now subject to the same conflict of interest standards and other requirements as other DOD panel members.

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Federal Advisory Committee Act as it relates to senior scientific advisory committees in the Department of Defense (DOD). As you requested, my comments will primarily cover the extent to which DOD has implemented recommendations we and others have made on the management and operations of these committees. We identified 5 reports containing 34 recommendations issued by our office, the DOD Inspector General, and the House Committee on Government Operations. (See Attachment I.)

DOD has implemented many of the recommendations we and the other organizations made and we believe DOD is generally complying with the act. However, some key recommendations still have not been implemented but should be.

The act prescribes guidance for the establishment, operation, administration, and termination of federal advisory committees. Among other things, it requires the membership of each committee and panel to be balanced as to the points of view represented and the functions to be performed; a federal official to be designated as committee management officer; meetings to be announced in the Federal Register; and, detailed minutes of each committee meeting to be prepared.

DOD has four senior scientific advisory committees (the Defense Science Board, the Army Science Board, the Air Force Scientific Advisory Board, and the Naval Research Advisory Committee) to provide advice on matters ranging from broad policy issues to specific recommendations on particular technical problems. The committees do their work primarily through panels made up of committee members and others, each performing a specific task or study.

I will summarize our findings on DOD actions in four areas that the Committee identified as being of special interest. The areas are balancing panel membership, screening conflicts of interest, providing DOD oversight and guidance, and assuring compliance of the Naval Research Advisory Committee.

BALANCING PANEL MEMBERSHIP

The act requires balanced membership on advisory committees. We earlier recommended that the Secretary of Defense require the services to document the steps for selecting individuals for panels to help achieve balanced panel membership. The DOD Inspector General recommended that the potential panel membership base for the Defense Science Board be broadened and that the reasons for individuals' selection as panel members be documented. Also, the House Government Operations Committee recommended that the nominees for panels, their qualifications,

selectees, and selection criteria be published in the Federal Register.

The advisory committees, we have since found, generally documented the process followed in making selections, but did not cite the specific reason(s) for selecting individuals for panel assignments. The Defense Science Board did adopt the Inspector General's recommendation that it request names of additional candidates from independent scientific and professional organizations, such as the National Academy of Science, to broaden the base of potential panel membership. DOD did not agree that public dissemination of the names of nominees and selectees, their qualifications, and selection criteria would be beneficial but rather believed that this could discourage potentially valuable individuals from serving on panels.

The Inspector General and the Government Operations Committee cited the need for clear guidance for achieving balance on the advisory committees. The "balance" of membership which advisory committees must achieve is not specifically defined in the act or in GSA's implementing regulations and there is limited case law on the subject. DOD directives do not define the term, and none of the advisory committees have written criteria for achieving balance in panel membership.

Advisory committee officials said that, while they consider a variety of factors in attempting to achieve balance in terms of points of view and functions to be performed, expertise is the primary consideration. A Defense Science Board official said the Board considers an individual's discipline, background, sex, and geographic location. We were told that the Army tries to maintain a proper mix of expertise, race, and sex among members. The Air Force told us it tries to balance membership through a mix of individuals from consulting organizations, laboratories, universities, and large and small companies; and it considers sex, minority status, ethnic background, and geographic location of potential members to be of secondary importance. The Navy said it tries to achieve balance among computer science and underwater acoustics disciplines, and among individuals with industry and academic backgrounds.

We recognize the difficulty of defining the term balance as envisioned in the act and determining whether in a given case balance has been achieved. We believe, nonetheless, that the DOD advisory committees could use guidance which, at a minimum, indicates the kinds of factors that should be considered in selecting committee and panel members and requires that the reasons for the selections be documented.

SCREENING FOR CONFLICTS OF INTEREST

DOD and the services require each individual nominated to serve on scientific advisory committees and panels to submit a "Confidential Statement of Affiliations and Financial Interests." Persons determined to have actual or potential conflicts of interest must either (1) disqualify themselves from considering any matters relating to these interests, (2) divest themselves of the interests, or (3) accept reassignment to positions that do not create conflict. Also, if a potential conflict is determined not to be substantial, the individual may be granted an exemption under the conflict of interest law and allowed to participate in matters affecting the interest.

The reports of the DOD Inspector General and Government Operations Committee noted that financial statements were not always obtained, completed or properly processed by the Defense Science Board and that conflict of interest reviews were not adequately conducted. Also, the services' procedures for reviewing committee members' statements did not require that decisions on actual or potential conflicts of interest be documented.

Therefore, these organizations recommended that new guidelines be issued, statements be collected before panels meet, statements be appropriately reviewed, and the results of the reviews be

documented before assigning members to panels. DOD agreed with these recommendations.

We found in February-March 1988 no widespread departure from DOD's procedures requiring reviews to be documented when members were first selected for a committee and annually thereafter. However, when the committee members were assigned to panels, the Defense Science Board did not often have available new statements submitted by prospective panelists, as is its policy, and the Air Force Scientific Advisory Board did not document its reviews of updated statements in light of the new duties panelists would be assuming. We could not in these instances substantiate that a review of panelists' financial interests in light of their new duties was made or that any actual conflict or potential conflicts of interest were identified and resolved.

Under Defense Science Board procedures, members submit a new disclosure statement when they are assigned to a panel and the Board's Executive Director and its Office of General Counsel are to review and approve each statement. During our 1988 review, DOD could not provide new statements for 14 of the 23 panel members assigned to the two panels we reviewed. Therefore, we could not tell whether these panel members' financial interests had been reviewed and approved before the first panel meetings.

Under Air Force Scientific Advisory Board procedures, members are to update their disclosure statements when they are assigned to a panel. The Executive Director and the Office of the Judge Advocate General are to review and approve the updated statements. Although updated statements were required from the 25 members on two panels, we found no documentation to show that the updated information was reviewed in light of the panelists' new duties.

With respect to resolution of conflicts of interests, the advisory committees use similar procedures to document the type of action taken to resolve a conflict. Reviewing officials are required to check a box on the disclosure form to indicate how a conflict was resolved, such as by disqualification. We found that the process of granting an exemption for insubstantial conflicts was used very infrequently.

All committees had procedures for informing panel members of their responsibilities to avoid conflicts of interest. Advisory committees provided handouts and briefings to members on avoiding and resolving conflicts of interest. The briefings were given by the Office of General Counsel and usually took place at full Board meetings or at the panels' first meetings. Members were given written statements admonishing them to avoid participation in matters affecting their financial interests. However, only the statements issued by the Naval Research

Advisory Committee were tailored to individual members' particular interests.

The Defense Science Board initiated a procedure in 1984 whereby the panel chairman and the Board's Executive Secretary and Executive Director, in consultation with the ethics counselor, are required to review proposed panel topics to identify those on which it may be difficult to obtain disinterested advice. When such topics are identified, a special plan for dealing with potential conflicts must be included in the panel's study agenda. A Board official said that only one such plan had been necessary.

PROVIDING DOD OVERSIGHT AND GUIDANCE

The Inspector General recommended in 1983 that the Assistant Secretary of Defense (Comptroller) perform periodic checks of Defense Science Board operations to ensure compliance with the act. The Deputy Assistant Secretary of Defense (Administration) responded that he would periodically review the Board's operations, and said he intended to review, at least once every 3 years, the records of all DOD advisory committees.

In calendar year 1984, the Deputy Assistant Secretary reviewed 25 selected advisory committees and panels, but the number has dropped each year since to 17 in 1985, 8 in 1986, and 6 in 1987.

A listing of the reviews is provided in Attachment II to my statement. No reviews have been made thus far in 1988. DOD does not have a plan showing which advisory committee and panels will be reviewed in the future.

In the reviews, performed by the Deputy Assistant Secretary, findings were communicated orally to the responsible advisory committee or panel officials. We were told that, if recurring problems were found, a memorandum was usually sent to the committee. A one-page memorandum was also prepared "for the record" showing what the review disclosed and sometimes indicating that a recommendation had been made to the responsible committee or panel official.

DOD records indicate that each of the four senior scientific advisory committees was reviewed at least once during 1985-87, and DOD found areas requiring each committee's attention, including recurring problems at the Army Science Board and Naval Research Advisory Committee. At the Army Science Board, decisions to close meetings to the public had not been approved at a higher level as required; and, at the Naval Research Advisory Committee, decisions to close meetings were not made 30 days before the meeting dates as required by regulations at that time. The DOD official responsible for the reviews could not produce any memorandums indicating that the committees had been informed of these findings.

We believe that the Deputy Assistant Secretary needs to regularly review the advisory committees' operations and to ensure that any deficiencies noted are promptly reported and that corrective actions are taken.

ASSURING COMPLIANCE OF THE
NAVAL RESEARCH ADVISORY COMMITTEE

You expressed particular interest in the Navy's actions on our recommendations that its panel members be appointed as special government employees rather than being considered by the Navy to be employees of a grantee. As special government employees, these members would be subject to the same conflict of interest standards and the panels would be subject to the same standards of balance, independence, and openness that apply to other DOD panels.

DOD said it concurred in our recommendations and promised prompt corrective action. The Navy said it would appoint panel members as special government employees after October 1, 1983. Navy guidance now prohibits persons from participating in panel activities until they are formally appointed as special government employees.

We reviewed a number of Navy panel member appointments and found that all members were appointed as special government employees.

As such, these employees are subject to the same standards as panel members of the other services' panels.

CONCLUSIONS

In summary, we believe DOD has taken many of the steps we and the other organizations identified as necessary to improve compliance with the Federal Advisory Committee Act. However, additional steps can and should be taken to implement certain of the earlier recommendations. Specifically, the advisory committees need to document the reason(s) for selecting committee and panel members, which can help to demonstrate how they went about achieving balance, and they could use guidance for this purpose. When committee members are assigned to panels, financial disclosure reviews should be documented. Finally, the Deputy Assistant Secretary of Defense (Administration) should ensure that the advisory committees and panels are regularly reviewed and that deficiencies are corrected. In particular, DOD needs to ensure that decisions to close meetings to the public are approved as required. These actions would help assure that DOD's senior scientific advisory committees are perceived as being independent and are functioning in compliance with the act.

That concludes my remarks. I will be pleased to answer questions.

RECOMMENDATIONS OF THE DOD INSPECTOR GENERAL, GAO,
AND THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
RELATING TO DOD'S COMPLIANCE WITH THE
FEDERAL ADVISORY COMMITTEE ACT

DOD INSPECTOR GENERAL REPORT:

Policies, Procedures and Practices For Operation of the Defense Science Board, (83-156, July 7, 1983).

The Inspector General recommended that the Under Secretary of Defense for Research and Engineering require the executive officer of the Defense Science Board ensure compliance with the directives requiring that:

- each advisory committee meeting is properly announced in the Federal Register;
- all records, reports, transcripts, minutes, or other documents utilized or generated by each task force are maintained at an appropriate central location;

- minutes are prepared in sufficient detail to present a distinct record of task force conduct, discussions, events, actions and conclusions;
- the designated Federal task force representative is fully aware of procedures and consequences of applicable laws, regulations and policies; and
- task force minutes document that prior studies have been thoroughly reviewed and analyzed to determine their relevance before a new review is undertaken.

The Inspector General also recommended that the Under Secretary of Defense for Research and Engineering require the Defense Science Board's Executive Officer to speed implementation of actions recently started that should ensure that financial disclosure statements are properly prepared and filed prior to the commencement of an advisory task force, and that the conflict of interest review conducted therein, not only follow appropriate guidance, but also present a substantive examination, whereby even the appearance of a conflict of interest would be averted.

The Inspector General recommended that the Assistant Secretary of Defense (Comptroller) clearly delineate:

- the "particular matter," with respect to financial interest, that would disqualify an individual from participating on a specific advisory committee; and
- what "balanced representation" on an advisory committee specifically entails and criteria for determining when it has been achieved.

The Inspector General also recommended that the Assistant Secretary of Defense (Comptroller):

- inaugurate procedures whereby periodic evaluations will be conducted of conflict of interest reviews to guarantee compliance in this area as set forth in the Public Law, OMB Circular, and DOD Directives, and
- perform periodic checks of Defense Science Board operations to ensure compliance with the Public Law and the OMB Circular as required by DOD Directive 5105.18.

GAO REPORT:

Objectivity of DOD's Senior Scientific Advisory Committees Can Be Better Assured, (GAO/GGD-83-76, Sept. 21, 1983).

GAO recommended that the Secretary of Defense require the services to:

- document the review of financial disclosure information when members are selected for specific panels,
- document the resolution of potential conflicts of interest or the appearance of such conflicts,
- comply with Federal Advisory Committee Act requirements on announcing meetings and preparing minutes, and
- document the steps for selecting individuals for panels.

GAO also recommended that the Secretary of Defense require the Secretary of the Navy to:

- appoint Naval Research Advisory Committee panel members as special government employees and make them subject to the same conflict-of-interest standards as other committee members, and

- apply the same standards of balance, independence, and openness to the Naval Research Advisory Committee panels that apply to the advisory committee panels of the other services.

DOD INSPECTOR GENERAL FOLLOWUP REPORT:

Report on the Followup Review of Policies, Practices and Procedures For Operation of the Defense Science Board, (84-013, Nov. 16, 1983).

The Inspector General recommended that the Under Secretary of Defense for Research and Engineering:

- improve documentation of reviews of prior studies. These reviews should be conducted before initiation of a task force, and made a matter of record in the task force's file,
- ensure that future certifications by Task Force Executive Secretaries are executed prior to the organization of the task force,
- broaden the base of the potential task force membership list by obtaining names of additional candidates from independent

scientific and professional organizations such as the National Academy of Scientists,

- ensure that the reasons for individuals' selection as task force members are documented and made a matter of record in the task force's files,
- establish stronger controls to ensure that no person receives any compensation for attendance at task force meetings that occur before all paperwork has been processed and all clearances have been granted and that any paid work outside of the task force meetings is approved and fully documented,
- issue guidance to the Task Force Chairmen to speed up the approving of meeting minutes in accordance with Defense Science Board guidelines,
- implement the following recommendation of the Defense Science Board's Ad Hoc Committee on Conflict of Interest:

For those task force topics which have potential sensitivity to conflict-of-interest considerations, a plan should be prepared by the designated Task Force Chairman and assigned Staff Executive. The plan should

include the identification of sensitive issues, modification of the task force terms-of-reference, if necessary, and the process for assigning task force members. This could include seeking uncommitted experts, requiring a membership that is "balanced" insofar as practicable, or disqualifying certain members from specified aspects of the task force's work.

This plan, as well as the evaluation conducted by the Executive Officer regarding a potential task force topic's sensitivity, should be documented and made a matter of record in the task force's file, and

-- provide the necessary space required for the establishment of a central storage location for the maintenance of all task force records.

GOVERNMENT OPERATIONS COMMITTEE REPORT:

Twenty-Seventh Report by the Committee on Government Operations,
(H.R. 98-580, Nov. 28, 1983).

The Government Operations Committee recommended that the Secretary of Defense:

- Move the administrative and operational control of Defense Science Board activities from the Office of the Under Secretary of Defense for Research and Engineering to an independent office reporting to the Deputy Secretary of Defense. Similar actions should be taken regarding the military services' advisory boards.
- Issue specific and clear-cut guidelines to preclude any appearance of conflict of interest, lack of balance, and bias in the operation of all defense advisory boards.
- Ensure that no individual is permitted to participate in advisory studies until all legal and administrative requirements are met.
- Prohibit any individual from participating in an advisory study who has a financial interest (direct or indirect) in the outcome unless specifically waived by the Secretary of Defense on the basis that the individual has unique qualifications necessary to meet panel objectives. Such waivers shall be included in the notice as required in the following

recommendation and should in no way infer immunity from prosecution should an actual conflict of interest develop.

- Require that the names of individuals selected to serve on panels, and the criteria upon which the selection was based be published in the Federal Register.
- Require that the financial statements of all nominees and all other administrative records concerning panel selections be kept on file in a central location for at least three years and upon request be made available to the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the House and Senate Committees on Appropriations and Armed Services.
- Require that nominees for task forces and their qualifications be published in the Federal Register, and invite public comment before the final selection is made.
- Preclude DOD employees from task force membership and active participation in the deliberations of the study groups.
- Require the Navy to comply with provisions of the Federal Advisory Committee Act in administering its panels.

-- Direct that all recommendations in the GAO and IG reports be fully implemented.

GAO FOLLOWUP REPORT:

Followup Review of Department of Defense Actions to Correct Problems in the Operation of the Defense Science Board (GAO/GGD-84-49, Feb. 13, 1984).

GAO reviewed the adequacy of the Inspector General's review of DOD's corrective actions taken on his July 1983 report. GAO concluded the Inspector General's followup review adequately covered the problems identified in his earlier report. GAO's review of selected financial disclosure statements filed by Defense Science Board members revealed no apparent conflicts of interest.

DOD Compliance Reviews of Advisory Committees
1984-1987

1984

3-16-84 Defense Science Board: Task Force on Fire Support
for Amphibious Warfare

3-20-84 Army Science Board

3-21-84 Armed Forces Epidemiological Board

4-6-84 Defense Investigation Agency Advisory Committee

5-7-84 Army Advisory Panel on ROTC Affairs

5-22-84 Air University Board of Visitors

5-23-84 Community College of the Air Force Advisory
Committee

5-23-84 Air Force ROTC Advisory Committee

6-19-84 Scientific Advisory Group on Effects

6-20-84 Naval Research Advisory Committee

6-27-84 Navy Resale Advisory Committee

7-11-84 Navy Resale Advisory Committee

7-25-84 U.S. Army Medical R&D Advisory Panel

7-30-84 Advisory Committee on the Air Force Historical
Program

8-1-84 Armed Forces Institute of Pathology Scientific
Advisory Board

8-20-84 Chief of Naval Operations Executive Panel

8-23-84 Air Force Scientific Advisory Board

10-9-84 Defense Science Board: Task Force on Chemical
Warfare and Biological Defense

10-12-84 Defense Science Board: Task Force on Atmospheric
Observation

ATTACHMENT II

ATTACHMENT II

10-31-84 Joint Strategic Target Planning Staff Scientific
 Advisory Committee

11-29-84 Defense Science Board

11-29-84 Joint Strategic Target Planning Staff Scientific
 Advisory Committee

12-5-84 National Security Telecommunications Advisory
 Committee

12-18-84 National Security Agency Advisory Board

12-18-84 Public Cryptography Advisory Committee

1985

1-16-85 Presidential National Security Telecommunications
Advisory Committee

1-16-85 Defense Contract Agency Scientific Advisory Group

1-18-85 Department of Defense Wage Board

5-9-85 National Board For the Promotion of Rifle Practice

5-14-85 Chief of Naval Operations Executive Panel

5-29-85 Department of Army Historical Advisory Commission

6-10-85 Special Operations Policy Advisory Group

6-11-85 Air Force Scientific Advisory Board

6-12-85 Naval Research Advisory Committee

7-2-85 Board of Visitors, Defense Intelligence College

7-2-85 Defense Intelligence Agency Advisory Commission

7-16-85 Department of Defense University Forum

7-18-85 Army Science Board

7-22-85 Academic Advisory Board To the Superintendent,
U.S. Naval Academy

9-11-85 Scientific Advisory Group On Effects

12-23-85 Defense Science Board: Task Force on Software

12-27-85 Defense Science Board: Panel on On Site
Inspection Technologies

1986

5-30-86 Naval Research Advisory Committee

6-5-86 Air Force Scientific Advisory Board

6-12-86 Defense Contract Agency Scientific Advisory Group

6-12-86 Presidential National Security Telecommunications
Advisory Committee

8-13-86 Chief of Naval Operations Executive Panel

8-29-86 Defense Intelligence Agency Scientific Advisory
Committee

9-5-86 Army Science Board

11-25-86 Defense Science Board: Task Forces on
Semiconductor Dependency, Image Recognition
Systems, Low Observable Technology, Follow-on
Forces Attack

1987

2-19-87 Secretary of the Navy Advisory Board on Education
and Training

8-26-87 Army Science Board

9-3-87 Naval Research Advisory Committee

9-17-87 SDIO Advisory Committee

9-30-87 Board of Visitors to the Defense Language
Institute

10-1-87 Board of Visitors to the Naval Post Graduate
School