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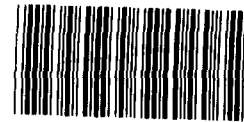
Before the Subcommittee on Census, Statistics and Postal Personnel, Committee on Post Office and Civil Service, House of Representatives

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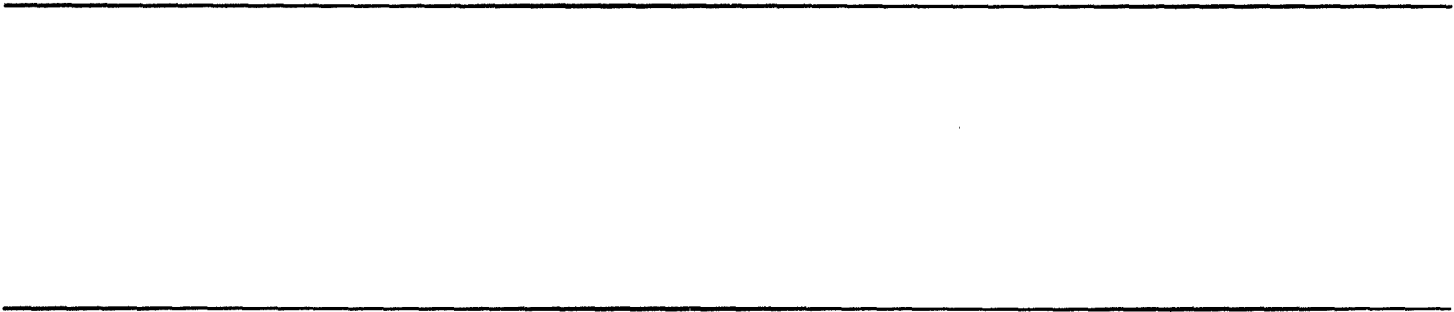
Structure and Oversight of Operational Boards and Commissions

Statement of
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Structure and Oversight of
Operational Boards and Commissions

Summary of Statement by
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GAO assisted the Subcommittee on Census, Statistics and Postal Personnel in examining possible improvements to the structure and oversight provided operational boards and commissions. Generally, boards and commissions that make or implement government decisions or policies or hold commemorative events can be described as operational.

The structure and management of operational commissions are guided by their enabling legislation, which can include such items as board membership, applicability of federal personnel and procurement requirements, and audit activities. GAO examined the legislation creating six operational commissions and found that legislation varies in how it specifically addresses particular practices or activities. For example, legislation for five of the six commissions specifically cite the applicability of elements of personnel law. Only one of the six has legislation which addresses the subject of audits of financial or operational matters.

Even if a specific management practice is not addressed in enabling legislation, other governmentwide statutes governing that practice may apply. However, the applicability of particular practices or activities in specific situations has sometimes required further guidance and interpretation.

The question of what elements Congress should incorporate into legislation establishing future boards and commissions is difficult because the same structure would not be appropriate for all of them. On one hand, levying many restrictions on operations or otherwise micromanaging might impede efficiency. On the other hand, because such organizations operate under government auspices, use federal funds, and sometimes receive donated funds, it is important to ensure their proper management. Thus, GAO believes it is necessary to consider the specific circumstances of a proposed commission and consider if there is a need for such features as

- Periodic reports to Congress detailing activities and progress of the commission.
- Independent and periodic audits.
- Authorization to contract with other federal organizations to provide administrative support services.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss our work on the structure and oversight of operational boards and commissions. At your request, we did work in three areas. Specifically, we

- tried to determine which existing boards and commissions have an operational rather than advisory function,
- analyzed the legislation and other documents related to selected commissions to determine the framework for commission operations and for ensuring proper management, and
- identified factors that the Subcommittee and the Congress might wish to consider in designing future legislation creating new boards and commissions.

BACKGROUND

Boards and commissions that make or implement government decisions or policies or plan or hold commemorative events may be described as operational. Such operational boards and commissions differ from those with an advisory function, which are covered under the Federal Advisory Committee Act (FACA). As you are aware, FACA was enacted in 1972 in response to concerns that federal advisory committees were proliferating without adequate review, oversight, or accountability.

The legislative history of FACA indicates that Congress intended that advisory committees operate under uniform procedures in full view of Congress and the public. Among other things, FACA included measures intended to ensure that (1) valid needs exist for establishing and continuing advisory committees and (2) Congress is kept informed of their activities. Under FACA, advisory committees are required to annually report information on their operations to the General Services Administration (GSA), which has been designated to provide general oversight. GSA is to make an annual review of each advisory committee to determine (1) if it is carrying out its purpose, (2) whether its responsibilities should be revised, and (3) whether GSA should recommend to the President that a committee be abolished or merged with another committee. Under FACA, the President is required to annually report to Congress on the activities, status, and changes in the composition of committees.

Unlike advisory committees, operational boards and commissions are not subject to the requirements contained in FACA. Each operates independently under the authority creating it and does not report to a central organization such as GSA.

UNIVERSE OF OPERATIONAL BOARDS
AND COMMISSIONS IS UNKNOWN

Early in our work we found that no central inventory identified boards and commissions outside the authorities of FACA. Consequently, we initially identified non-FACA boards and commissions by comparing the listing of all FACA committees contained in GSA's Nineteenth Annual Report on Federal Advisory Committees with information from other sources, such as the Encyclopedia of Governmental Advisory Organizations, the federal budget, and the U.S. Government Manual. We then compiled a listing of boards and commissions that appeared to meet the following criteria:

- The board or commission was expected to operate over a 5- to 10-year period.
- It was not identified in GSA's annual report on advisory committees as being a FACA organization.
- It was an entity of the federal government.
- It was receiving appropriated funds.

With the help of GSA officials, we further refined our list by eliminating some organizations because further research found them to be covered by FACA after all or because they operate more as independent agencies, such as the Defense Nuclear Facilities Safety Board.

We identified 76 boards and commissions that appeared to meet our criteria and judgmentally selected 17 for closer examination. We found that 6 of the 17 have operational characteristics. These six boards and commissions are:

- International Cultural and Trade Center Commission. This commission was established in August 1987 to participate in planning, creating, and operating an international cultural and trade center on the Federal Triangle site in Washington, D.C. The commission ceased operations in March 1992 after it was determined that the center would not be financially self-sustaining as required by legislation.
- Commission for the Preservation of America's Heritage Abroad. This commission was created in August 1985 to identify and publish a list of cemeteries, monuments, and historic buildings located abroad that are associated with the foreign heritage of United States citizens from eastern and central Europe. It also encourages the preservation and protection of such landmarks and reports on their condition.

- Commission on the Bicentennial of the U.S. Constitution. This commission was established in September 1983 to promote and coordinate activities to commemorate the bicentennial of the Constitution. This commission terminated in June 1992.
- Korean War Veterans Memorial Advisory Board. The board was established in October 1986 to recommend the site and select the design for the memorial, promote the establishment of the memorial, and encourage the donation of private funds for its construction and maintenance.
- Blackstone River Valley National Heritage Corridor Commission. The commission was created in January 1986 to assist federal, state, and local authorities in the development and implementation of cultural, historical, and land resource management plans for lands and waters in the Blackstone River Valley area of Massachusetts and Rhode Island.
- United States Holocaust Memorial Council. This council was established in October 1980 to provide for appropriate ways for the nation to commemorate the holocaust; to plan, construct, and oversee the operation of a permanent living memorial museum to the victims of the holocaust; and to develop a plan for carrying out the recommendations of the President's Commission on the Holocaust.

Two additional holiday commissions--the Martin Luther King, Jr., Federal Holiday Commission and the Christopher Columbus Quincentenary Jubilee Commission--are subject to the jurisdiction of this Subcommittee. We did not include the Martin Luther King, Jr., Federal Holiday Commission with those listed above because it came under the provisions of the Federal Advisory Committee Act in 1989, when the commission was extended until April 20, 1994. The Christopher Columbus Quincentenary Jubilee Commission has been the subject of congressional hearings held by this Subcommittee and our prior testimony.¹ Because of this prior scrutiny, we did not include it for further review.

LEGISLATIVE GUIDANCE PROVIDED
ON STRUCTURE AND MANAGEMENT

The structure and management activities of each operational commission is guided by the legislation creating it. These structures and activities can include such items as board membership and compensation, adherence to federal personnel requirements in the hiring and compensation of staff and the

¹Christopher Columbus Quincentenary Jubilee Commission, (GAO/T-GGD-91-24, Apr. 23, 1991).

payment of travel expenses, federal procurement requirements, and audits of financial and operational activities.

We examined the legislation creating each of the six listed operational commissions and found that it varies in how it specifically addresses particular practices or activities that need to be followed. For example, legislation for five of the six commissions specifically cite the applicability of elements of federal personnel law. Legislation for three of the six address the applicability of procurement regulations. The legislation of one addresses the subject of audits of financial or operational matters.

For some types of management activities, such as procurement, travel, and compensation of staff, unless the legislation specifically exempts a commission from a federal statute setting forth governmentwide procedures, the statute would normally be applicable. Also, we found that commissions may follow federal standards as a result of agreements with GSA or other entities to provide support services, even if their legislation is otherwise silent.

For example, we noted that two of the commissions--the Commission on the Bicentennial of the U.S. Constitution and the Commission for the Preservation of America's Heritage Abroad--contracted with GSA to provide administrative support services. We examined the Memoranda of Understanding entered into by these commissions with GSA and found that many administrative procedures are covered. Among other things, the Commission on the Bicentennial of the U.S. Constitution's agreement with GSA called for GSA to provide all accounting functions as well as payroll, financial reporting, security investigations, personnel, legal, and ethics counselling services.

Some of the other commissions have administrative services provided by other organizations. For example, through a cooperative agreement, the National Park Service provides services for the Blackstone River Valley National Heritage Corridor Commission and the Holocaust Memorial Council. The agreements call for such things as personnel management, budget and financial management, contracting and small purchasing, and property management services. According to GSA and NPS officials, in providing these services they follow applicable federal regulations and procedures.

We also noted that even when the legislation addresses a provision for particular management practices, questions of applicability and congressional intent may still arise. For example, on two separate occasions we were asked for our legal opinion as to whether the Federal Property and Administrative Services Act of 1949 or the Federal Acquisition Regulations applied to the Holocaust Memorial Council and the Christopher

Columbus Commission when contracting with donated funds. The legislation creating both commissions addressed the issue of procurement, but it was unclear whether Congress intended for donated funds to be viewed as appropriated funds subject to all statutes and regulations governing such appropriations. As a general rule, expenditures of both appropriated and donated funds to accomplish a statutory purpose are subject to such statutes and regulations.

In both instances we held that the Council and Commission are not subject to such rules when expending only donated funds. Our conclusion in both cases was based on the same two reasons. First, we noted that certain statutes governing the expenditures of appropriated funds are intended to prevent the augmentation of direct appropriations with funds from outside sources, resulting in a level of operation beyond that authorized by Congress. Since both the Holocaust Memorial Council and the Christopher Columbus Commission are to carry out major, continuing functions using only donated funds, the concern with augmentation of appropriations was not applicable. Second, our review of the legislative history of the enabling legislation for both the Holocaust Memorial Council and Christopher Columbus Commission indicated that Congress intended to allow these entities to expend donated funds subject only to the directives of their governing boards, free of the strictures generally applicable to government funds.

We cite these examples to illustrate that while the underlying legislation creating such boards and commission is a principal means of directing their management activities, questions may still arise, prompting the need for further guidance and interpretation.

Auditing Activities

In our view, an important management tool to help guide operations is routine financial and operational audits. Such activities facilitate oversight and also serve as a means of keeping Congress informed of the commissions' progress as well as any problems that need congressional assistance. Audits are also needed to ensure the proper use and management of appropriated funds. While the annual amount of federal funds appropriated for fiscal year 1992 for the operational boards we reviewed varied, from \$200,000 to \$11,000,000, the cumulative total amounts can be significant.

As you know from prior work by this Subcommittee as well as by us, audits can serve to identify instances in which improved financial and internal controls are needed. For instance, in work we did at the Subcommittee's request on the Christopher Columbus Quincentenary Jubilee Commission, we found that it suffered from a lack of accounting controls, weak internal

controls, and incomplete or incorrect financial statements and recordkeeping. The Inspector General (IG) who was asked by the Chairman of the commission to audit the commission found problems with receipt and revenue records, property management, payroll, and travel.

We asked the six commissions we reviewed to provide us with all audits conducted since 1988. We found that audits of administrative and/or financial procedures and practices had been conducted for five of the commissions.

- A 1991 GSA IG audit at the Commission on the Bicentennial of the U.S. Constitution found that the two income accounts maintained by the commission accurately reflected the results of sales and collections. GSA concluded that all orders were processed accurately, vendors were paid in a timely manner, and collections were properly deposited.
- The Korean War Veterans Memorial Fund audit conducted by the U.S. Army Audit Agency traced the general ledger trial balance as of March 3, 1991, and concluded that the statement presented fairly the assets and liabilities arising from cash transactions of the fund and its revenue collected and expenses paid during the year.
- A 1991 GSA audit of the United States Commission for the Preservation of America's Heritage Abroad found a majority of the administrative procedures and practices to be satisfactory. However, it noted deficiencies in (1) the preparation of travel authorizations and vouchers and (2) the reconciliation of commission financial records with the financial records maintained by GSA. In 1992 an independent accounting firm audited the administrative practices and procedures and found them to be satisfactory.
- A December 1990 GSA audit of the administrative procedures at the International Cultural and Trade Center Commission found the overall procedures and controls to be adequate. It also identified opportunities for the commission to improve its controls over some areas, including travel voucher processing and timekeeping.
- Officials at the Holocaust Memorial Council said they have an agreement with the Department of the Interior Inspector General to provide audit services, and the council had its last audit done in 1988. That review consisted of a financial and compliance audit covering the operating period of October 1984 through June 1986. It concluded that the council and the National Park Service, which provides administrative services to the council, did not have adequate internal controls over the expenditure of appropriated funds dealing with such matters as travel, property management, and

payroll. Interior's IG followed up on the implementation of its recommendations through 1990, and found that all of the recommendations were eventually adopted. Officials from the Holocaust Memorial Council also pointed out that their trust fund of private donations is reviewed annually by a private accounting firm.

The Blackstone River Valley National Heritage Corridor Commission also has a cooperative agreement with Interior's National Park Service. The Executive Director told us that the commission has not been audited since its creation in 1990, but he plans to work with the National Park Service to schedule an audit in the near future.

Inspector General Act Amendments of 1988

On a related matter, we also looked at adherence to reporting requirements contained in the Inspector General Act Amendments of 1988. As defined under this act, federal entities, including the Commission on the Bicentennial of the U.S. Constitution, the Commission for the Preservation of America's Heritage Abroad, the Holocaust Memorial Council, and the International Cultural and Trade Center Commission, are to report annually to the Office of Management and Budget (OMB) and each house of Congress on audit and investigative activities in their organizations. Among other things, the reports are to specify the actions taken to ensure that audits are conducted and should include a list of each audit report completed during the period and a summary of any significant findings.

We asked officials from OMB for copies of the reports submitted by these four commissions for the annual reporting period ending October 1992. They said only one report had been received, although we were provided some reports from earlier years. The 1992 report was submitted by the Holocaust Memorial Council. The OMB officials acknowledged that compliance with the reporting requirement has been poor in general--as of this month, 33 of the 71 federal entities required to report in 1992 had not done so--and that in the past OMB had not aggressively followed up on nonfilers.

According to these officials, they are undertaking a special project to ensure that 1992 reports are submitted. They sent a follow-up letter in December 1992 to the federal entities that had not filed as of that date and plan to send another. As part of this project, OMB plans to examine information contained in the reports in terms of its value and usefulness. It plans also to consider what, if any, changes should be made to the reporting requirement, including possible additional information requirements.

WHAT PROVISIONS SHOULD BE CONSIDERED
FOR FUTURE BOARDS AND COMMISSIONS?

Boards and commissions are formed as independent entities under legislation drafted by a variety of congressional committees. Enabling legislation is the principal guidance for establishing standards and procedures of operation. As we have seen, the legislation can and does vary among the commissions as to what is required. This makes it difficult to determine whether the commission is legally required to meet a certain provision. We have also observed that even when the legislation is not specific on certain matters, the commissions themselves may follow practices that are common in the federal government. The question arises about what elements Congress should consider incorporating into legislation that may come before it to create future proposed boards and commissions.

In our view there is no uniformly applicable answer to this question. On one hand, because boards and commissions operate under the auspices of Congress or other authorities, use federal funds, and are sometimes authorized to receive donated funds, it is important that Congress ensure their proper management. On the other hand, it may be counterproductive to levy restrictive provisions or operating instructions that micromanage or otherwise impede efficient operations. To balance these considerations, we believe the specific circumstances and other unique features of a proposed commission would need to be considered. For example, if a proposed commission had a very short time frame to complete a specific function, it might not be practical to require it to go through civil service recruitment and other requirements or to require adherence to all procurement rules.

We do believe, however, that recent work done by this Subcommittee on commissions under its jurisdiction has identified several key areas that provide a framework that legislative drafters of future boards and commissions should consider on a case by case basis. First, enabling legislation could establish a requirement for periodic reports to Congress detailing the activities of the commission, including an accounting of funds received and expended. Such reports would help in monitoring the commission's progress as well as identify difficulties needing congressional attention.

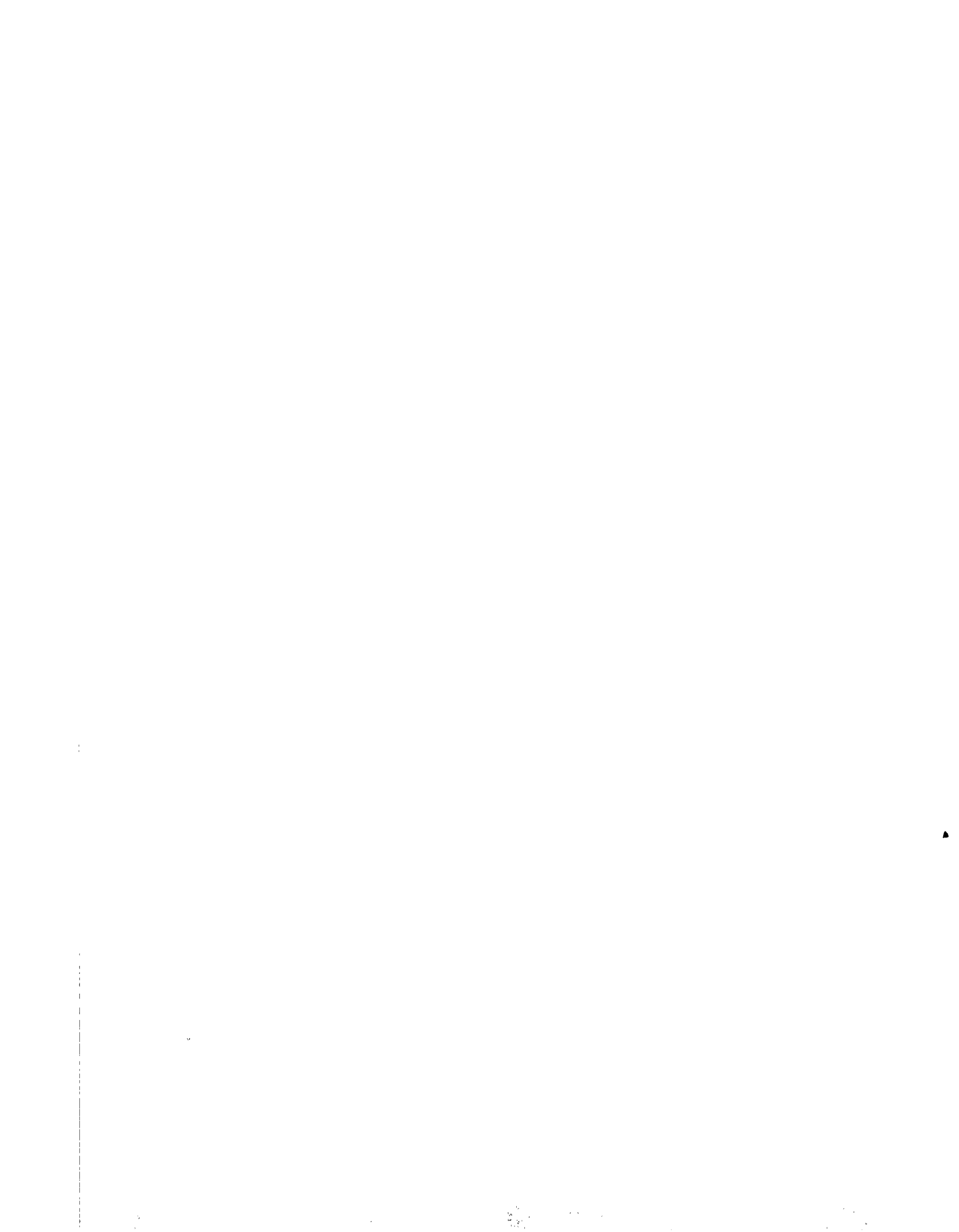
A second consideration could be to require a periodic independent audit of financial transactions involving public as well as private funds. As previously noted, this Subcommittee identified problems with another commission through such independent audits. As the Subcommittee has done in recent legislation creating the Thomas Jefferson Commemoration Commission, we believe it could be helpful to identify which organization is to conduct the audit. In this manner both parties--the commission and the audit

organization--are specifically notified of congressional expectations. Because IG offices have limited resources, it may not be practical for a single office to support audits for all new boards and commissions. It might, however, be feasible to spread audit coverage for newly created boards and commissions among different IG offices. Another alternative would be for any new boards and commissions to contract with private accounting firms for these services.

A third provision that should be considered is the authorization to contract with GSA or some other organization to provide administrative support services. Such services can be particularly helpful to commissions with smaller staffs and could minimize the need for new staff to become immediately familiar with such administrative duties as time and attendance and travel regulations. Although the absence of such a provision would not prevent a newly formed board or commission from obtaining such services, its inclusion in enabling legislation would underscore the availability of such services.

In closing, I would like to make one further suggestion. As I have mentioned, the Inspector General Act Amendments of 1988 call for federal entities, including some of the operational commissions covered in our work, to report annually to OMB and each house of Congress on audit activities in their organizations. Among other things, the reports are to specify the actions taken to ensure that audits are conducted and are to include a summary of any significant findings of audits performed during the period. OMB is undertaking a project looking at the value of the information provided in these reports, including possible deletions of, as well as additions to, the information required. This and other committees with jurisdiction over boards and commissions required to report might wish to consider the type of information that would help congressional oversight activities and work with OMB to add it to the reporting requirements. Such information might include plans for future audit activities. Because, as we have found, compliance with the reporting requirement has not been good, this and other committees might also wish to emphasize congressional expectations that the reports be submitted in a timely and thorough manner.

Mr. Chairman, this concludes my statement. My colleagues and I will be pleased to answer any questions you or any member of the Subcommittee may have.



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