



Testimony before the Subcommittees on Investigations and Oversight, and Environment, Committee on Science, Space, and Technology, House of Representatives

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## EPA ADVISORY COMMITTEES

# Improvements Needed for Member Appointment Process

Statement of J. Alfredo Gomez, Director,  
Natural Resources and Environment

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Chairwomen Sherrill and Fletcher, Ranking Members Norman and Marshall, and Members of the Subcommittees:

Thank you for the opportunity to discuss our report, publicly released yesterday,<sup>1</sup> on the U.S. Environmental Protection Agency's (EPA) process for appointing members to the federal advisory committees it manages under the Federal Advisory Committee Act (FACA).<sup>2</sup> These committees play an important role at EPA by providing advice that helps the agency develop regulations, accredit laboratories, and manage research programs, among other activities. As of March 31, 2018, EPA managed 22 such committees.

Questions have been raised about EPA's process for appointing members to its federal advisory committees following recent policy changes affecting who serves on these committees. In light of these questions, we were asked to review issues related to how EPA appoints advisory committee members. This statement summarizes key findings from our report, which (1) describes EPA's established process for appointing members to serve on EPA advisory committees; (2) evaluates the extent to which EPA followed its process from fiscal year 2017 through the first two quarters of fiscal year 2018; and (3) describes how, if at all, selected characteristics of EPA's advisory committees changed after January 2017.

To perform the work for the report, among other things, we reviewed relevant federal laws, regulations, and guidance; reviewed all EPA documentation used to support appointment decisions from the 17 committees that appointed or reappointed members from fiscal year 2017 through the first two quarters of fiscal year 2018; reviewed portions of financial disclosure forms for 74 individuals appointed or reappointed to committees during this period to determine if their forms were consistent with key federal requirements and guidance; and analyzed information from the U.S. General Services Administration's (GSA) FACA database,<sup>3</sup> which contains information about FACA committees that agencies,

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<sup>1</sup>GAO, *EPA Advisory Committees: Improvements Needed for the Member Appointment Process*, [GAO-19-280](#), (Washington, D.C.: July 8, 2019).

<sup>2</sup>Pub. L. No. 92-463, 86 Stat. 770 (1972), codified, as amended at 5 U.S.C. app. 2.

<sup>3</sup>GSA has certain government-wide responsibilities for implementing FACA, including maintaining the government-wide FACA database that tracks certain characteristics of advisory committees.

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including EPA, are required to provide annually.<sup>4</sup> We also interviewed agency officials involved with appointing committee members. Additional information on our scope and methodology can be found in the report. Our work was performed in accordance with generally accepted government auditing standards.

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## EPA's Established Process for Appointing Members to Serve on Advisory Committees Includes Soliciting Nominations, Evaluating Candidates, and Obtaining Approvals

As we state in the report, according to our review of EPA's *Federal Advisory Committee Handbook*, EPA's established process for appointing advisory committee members involves three main phases: soliciting nominations, evaluating candidates, and obtaining approvals from relevant EPA offices before the Administrator or Deputy Administrator makes final appointment decisions.<sup>5</sup> EPA developed the *Federal Advisory Committee Handbook* to clarify roles and responsibilities for complying with relevant requirements. Under FACA, an agency establishing an advisory committee must, among other things, require the committee's membership to be balanced in terms of the points of view represented and the functions to be performed by the committee.<sup>6</sup> Also, one purpose of FACA is to ensure that uniform procedures govern the establishment and operation of advisory committees.<sup>7</sup>

Each of the three main phases in EPA's established process involves several interim steps. For example, a key step for evaluating candidates

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<sup>4</sup>We analyzed information on four characteristics of committees before and after the two most recent changes in presidential administrations: committee composition (i.e., are a committee's members affiliated with academia, consulting, industry, government, a non-government organization, or other), regional affiliation (i.e., with which regions of the country are committee members affiliated), membership turnover (i.e., the percentage of committee members who no longer served on a committee), and the number of meetings committees held). In following our approach for identifying notable changes, each change identified as notable had at least a 20 percentage point difference in the change to the characteristic after January 2017 compared to after January 2009. We did not test for statistically significant differences for reasons including the small committee sizes.

<sup>5</sup>U.S. Environmental Protection Agency, *Federal Advisory Committee Handbook*, (Washington, D.C.: August 2017). EPA issued an earlier version of the handbook in March 2012.

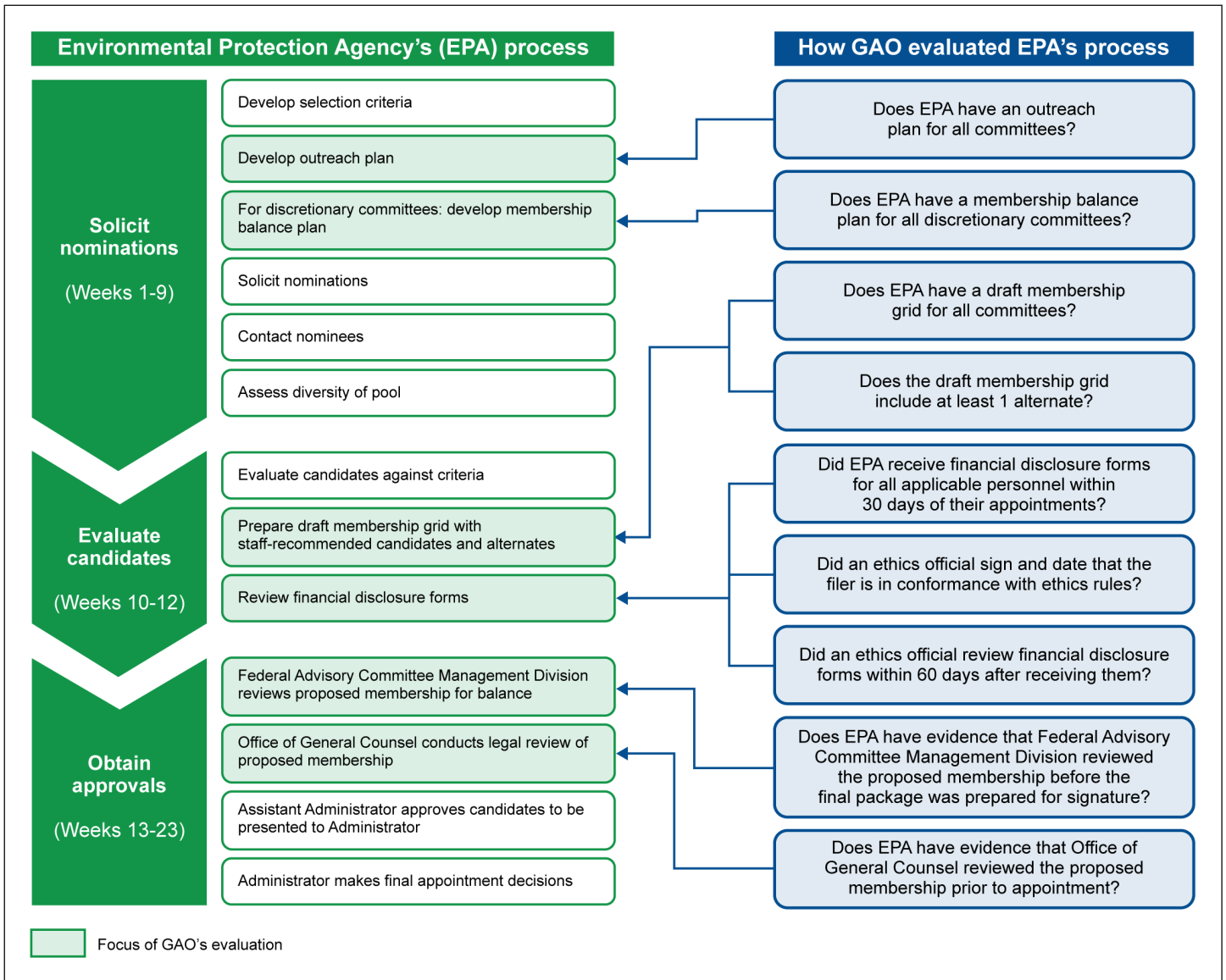
<sup>6</sup>5 U.S.C. App § 5(b)(2), (c). Courts that have reviewed challenges to advisory committee composition under these provisions have either held that the balance requirements are nonjusticiable or tendered a very high degree of deference to the agency's selection of committee members. Bull, Market Corrective Rulemaking: Drawing On EU Insights To Rationalize U.S. Regulation, 67 Admin. L. Rev. 629, 678 n.203 and accompanying text (2015).

<sup>7</sup>5 U.S.C. App. 2 § 2(b)(4).

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involves EPA staff members preparing draft membership grid documents that reflect their recommendations on the best qualified and most appropriate candidates for achieving balanced committee membership, according to the *Federal Advisory Committee Handbook*. Figure 1 shows EPA's established process and the steps we reviewed to evaluate the extent to which EPA followed its process from fiscal year 2017 through the first two quarters of fiscal year 2018. Unless noted otherwise, explanations of these steps can be found in the *Federal Advisory Committee Handbook*, which documents the agency's established process.

**Figure 1: EPA's Established Process for Appointing Advisory Committee Members and How GAO Evaluated EPA's Process from Fiscal Year 2017 through the Second Quarter of Fiscal Year 2018**



Source: GAO analysis of EPA's *Federal Advisory Committee Handbook* (Washington, D.C.: August 2017). | GAO-19-681T

Note: We reviewed those aspects of the process for which EPA was to have documentary evidence, and we evaluated the implementation of ethics oversight requirements that are relevant to EPA's committee member appointment process.

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## EPA Generally Followed Its Established Process but Did Not Follow a Key Step for Appointing 20 Committee Members to Two Committees or Ensure Certain Members Met Federal Ethics Requirements

As we state in our report, our review of agency documents that supported appointment decisions for the 17 committees that appointed or reappointed committee members from fiscal year 2017 through the first two quarters of fiscal year 2018 found that EPA generally followed its established process for most of its 22 advisory committees. However, in fiscal year 2018, EPA did not follow a key step for appointing 20 committee members to two committees we reviewed: the EPA Science Advisory Board (SAB) and Clean Air Scientific Advisory Committee (CASAC), which advise the agency on environmental regulatory matters, among other things.<sup>8</sup> Our review found that the 2018 appointment packets for these two committees did not contain draft membership grid documents reflecting EPA staff rationales for proposed membership, as called for by EPA's established process.<sup>9</sup>

As a result, we recommended that the EPA Administrator direct EPA officials responsible for appointing advisory committee members to follow a key step in its appointment process—developing and including draft membership grids in appointment packets with staff rationales for proposed membership—for all committees. By doing so, the agency would have better assurance that it will (1) consistently meet FACA's purpose of encouraging uniform appointment procedures and (2) show how it made appointment decisions to achieve the best qualified and most appropriate candidates for balanced committee membership.

EPA disagreed with this recommendation. In written comments on a draft of the report, EPA stated that it followed all membership steps outlined in agency guidance with the exception of two committees, the SAB and CASAC, for which it substituted the development of membership grids with what the agency states was a more rigorous examination of the candidates (a series of briefings with senior management discussing the

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<sup>8</sup>The objective of the SAB, the agency's largest advisory committee, is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental issues. CASAC reviews, among other things, EPA's national primary and secondary ambient air quality standards and recommends new standards and revisions of existing standards as may be appropriate.

<sup>9</sup>Appointment packets contain the documents used by EPA management to make appointment and reappointment decisions. Example of documents in the appointment packets include committee charters, which specify the committee's mission, scope, objectives, cost, membership, management, and recordkeeping; outreach plans, which document the agency's plan for recruiting committee members; and draft membership grid documents, which reflect EPA staff recommendations about who should be appointed to serve on advisory committees and why.

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strengths and weaknesses of potential candidates). EPA stated that this is within the discretion of the EPA Administrator and that the vetting of candidates for the SAB and CASAC occurred in a different manner than in previous years with a process more robust than membership grids.

We agree that conducting such briefings is within the discretion of the EPA Administrator, and we did not assess the outcomes of the membership appointment process. However, it remains that, for the SAB and CASAC, EPA did not follow a key step in which agency staff are to document in draft membership grids and include in appointment packets their rationales for recommending the candidates they deem best qualified and most appropriate for achieving balanced committees.

There may be benefits to following any number of alternative processes for appointing committee members. However, as EPA stated in its *Federal Advisory Committee Handbook*, EPA developed the handbook to help agency officials comply with FACA requirements. For these two advisory committees, EPA did not follow its established committee appointment process, impeding the agency's ability to ensure that it consistently meets—across all of its advisory committees—FACA's purpose of encouraging uniform committee appointment procedures. In addition, by directing officials responsible for appointing committee members to document staff rationales for proposed membership, the agency would have better assurance that it could demonstrate how it made appointment decisions to achieve the best qualified and most appropriate candidates for balanced membership.

Moreover, we found in the report that EPA did not consistently ensure that committee members appointed as special government employees (SGE)—who are expected to provide their best judgment free from conflicts of interest and are required by federal regulations to disclose their financial interests—met federal ethics requirements.<sup>10</sup> For about 23 percent, or 17 of the 74 financial disclosure forms we reviewed, an ethics official had not signed and dated that the SGE filing the form was in compliance with federal ethics rules. EPA also did not periodically review

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<sup>10</sup>If EPA expects a federal employee to serve no more than 130 days in any 365-day period, guidance from the U.S. Office of Government Ethics (OGE), which oversees the executive branch's ethics program, states that the employee should be designated as an SGE. OGE guidance explains the circumstances under which advisory committee members may be designated as SGEs. See DO-05-012 and *Informal Advisory Memorandum 82 x 22* (Washington, D.C.: July 9, 1982). See also 18 U.S.C. § 202(a).

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its ethics program, as called for by federal regulations, such as through audits or spot checks, to evaluate the quality of financial disclosure reviews for SGEs. As a result, we recommended that EPA's Designated Agency Ethics Official direct EPA's Ethics Office, as part of its periodic review of EPA's ethics program, to evaluate—for example, through audits or spot checks—the quality of financial disclosure reviews for SGEs appointed to EPA advisory committees. Until EPA's Ethics Office does so, it will not have reasonable assurance that it will address noncompliance with federal ethics requirements for its advisory committees.

EPA officials acknowledged that taking this additional oversight measure could enhance the agency's ethics program. In addition, in written comments on a draft of the report, EPA noted that the agency has resolved staffing issues and is engaging in a thorough review of all employees' (including SGEs serving on federal advisory committees) ethics forms to ensure they meet all ethics requirements.

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## Selected Characteristics of Four EPA Advisory Committees Changed Notably after January 2017, but There Were No Notable Changes for 14 Committees

As we stated in our report, of the four characteristics we reviewed from GSA's FACA database—committee composition, regional affiliation, membership turnover, and number of meetings committees held—one or more of the first three changed notably for four of 18 EPA advisory committees after January 2017.<sup>11</sup> We compared the four characteristics of committees before and after the two most recent changes in presidential administrations. Each change identified as notable had at least a 20 percentage point difference in the change to the characteristic after January 2017 compared to the period after January 2009. For example, we found that the percentage of committee members with an academic affiliation serving on the SAB decreased by 27 percentage points, or from 77 percent (36 of 47 members) on January 19, 2017, to 50 percent (22 of 44 members) about 15 months later on March 31, 2018. See figure 2.

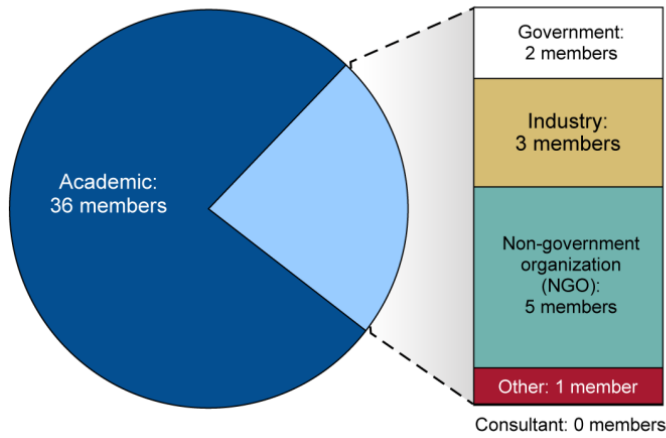
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<sup>11</sup>Of the 22 advisory committees EPA managed on March 31, 2018, we did not analyze the four characteristics of four committees because they were established after the beginning of the time frame we analyzed. Also, we did not analyze all four characteristics for the remaining 18 committees because of data reliability issues or the nature of the characteristic. Our report provides additional information about the characteristics we analyzed for which committees.

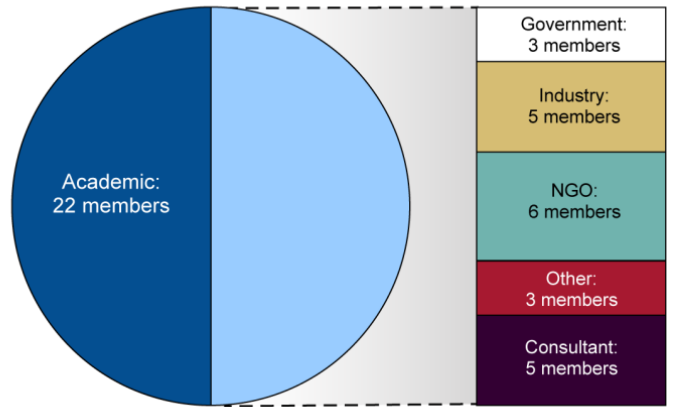


**Figure 2: Committee Composition of EPA’s Science Advisory Board (SAB) after January 2017 and January 2009**

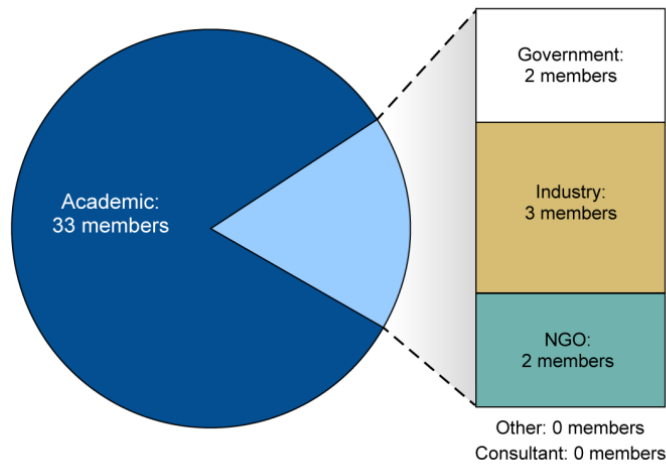
Committee composition of the SAB on January 19, 2017



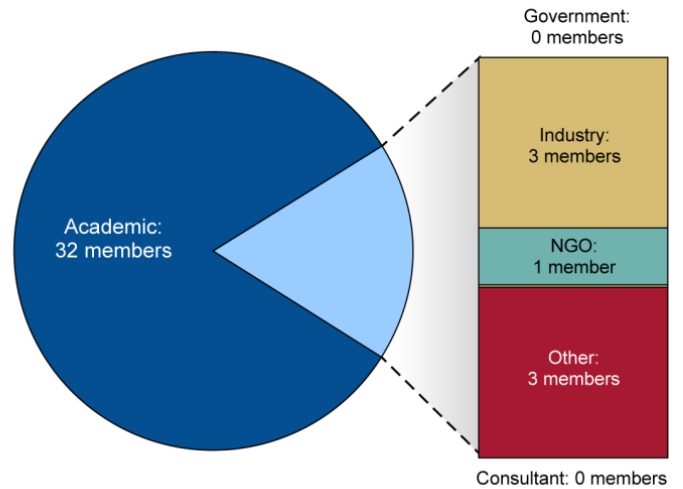
Committee composition of the SAB on March 31, 2018



Committee composition of the SAB on January 19, 2009



Committee composition of the SAB on March 31, 2010



Source: GAO analysis of data from the U.S. Environmental Protection Agency (EPA) and the U.S. General Services Administration’s Federal Advisory Committee Act database. | GAO-19-681T

Note: The “other” category includes committee members: (1) affiliated with more than one category; (2) not affiliated with any of the categories; or (3) for which the Federal Advisory Committee Act (FACA) database did not provide sufficient information for us to assign a category.

EPA raised issues with how we conducted some of our data analyses and with some of the data points we presented, which we addressed in the report.

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Chairwomen Sherrill and Fletcher, Ranking Members Norman and Marshall, and Members of the Subcommittees, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

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## GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Alfredo Gomez, Director, Natural Resources and Environment, at (202) 512-3841 or [gomezj@gao.gov](mailto:gomezj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. In addition to the contact named above, Joseph Dean Thompson (Assistant Director) and Mary Koenen (Analyst in Charge) made key contributions to the testimony. Other staff who made contributions to the report cited in the testimony were Karen Chen, Charlie Egan, Richard Johnson, James Lager, Amber Sinclair, and Kiki Theodoropoulos.

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