

2005 Government in the Sunshine Act

National Science Foundation
Office of Inspector General

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OIG 06-2-010



Introduction

Background

The National Science Board (Board) is the governing entity of the National Science Foundation (NSF), an independent Federal agency established by the National Science Foundation Act of 1950. The Board is composed of 24 part-time, Presidentially appointed members, and the NSF Director, who are selected on the basis of their eminence in research or public affairs.

The Board has responsibility for providing national science policy advice to the President and to the Congress and for acting as the governing board of the NSF. The Board conducts its business during two-day meetings, which are generally held five to six times a year. Much of the Board's analysis and background work in preparation for Board discussion and action is done through its committees.

Currently, the Board has five standing committees: Executive, Audit and Oversight, Education and Human Resources, Programs and Plans, and Strategy and Budget. These committees, and other subcommittees and task forces, generally meet during the same two-day period as the full Board. In addition, the committees occasionally meet at other times throughout the year on an as-needed basis.

The Government in the Sunshine Act

In the early 1970s, partially in response to the Watergate scandal, Congress enacted the Government in the Sunshine Act along with other anti-secrecy legislation. Congress intended the Sunshine Act to open the government's deliberation processes to public scrutiny.

The Act applies to agencies "headed by a collegial body composed of two or more individual members . . . and any subdivision thereof authorized to act on behalf of the agency,"¹ and covers some 50 Federal agencies, including the National Science Board. The Act requires that "every portion of every meeting of an agency shall be open to public observation"² with ten narrow exemptions for discussions of material that are likely to disclose:

- (1) National Defense and foreign policy;
- (2) Internal personnel rules and practices;

¹ 5 U.S.C. §552b(a)(1) (2005).

² *Id.* at §552b(b).

- (3) Statutory exemptions;
- (4) Proprietary information;
- (5) Accusation of crime or formal censure;
- (6) Personal privacy;
- (7) Investigatory records;
- (8) Financial institution reports;
- (9)(A) Financial speculation and stability;
- (9)(B) Frustration of proposed agency action; and
- (10) Issuance of subpoena, participation in civil action or proceeding, or formal agency adjudications.³

While the Act does not require an agency to hold meetings, it does contain a number of procedural requirements that must be followed when an agency decides to meet for either a closed or open session. First, at least one week prior to each meeting, the agency must make a public announcement regarding the date, time, and place of the meeting and whether the meeting is to be open or closed.

Additionally, to close all or a portion of a meeting, an agency must vote to do so and make publicly available a written copy of the vote and a “full written explanation of its action closing the portion [of the meeting].”⁴ Also, for a closed meeting, the agency’s General Counsel must publicly certify that the meeting may be closed under one of the Act’s exemptions. Finally, the agency must annually report to the Congress: any changes in the agency’s policies and procedures under the Act; a tabulation of the number of meetings held, exemptions applied, and the days of public notice provided; a brief description of litigation or formal complaints concerning the implementation of the Act; and any changes in law that have affected the open-meeting responsibilities of the agency.

Open Meetings of the National Science Board

In accordance with the Government in the Sunshine Act, the National Science Board has traditionally opened its full-Board meetings to the public. However, prior to 2003, the Board did not provide public access to the meetings of its committees, subcommittees, taskforces, or other subdivisions.

The NSF Authorization Act of 2002, which became effective in December 2002, contained administrative amendments to the National Science Foundation Act pertaining to Board

³ *Id.* at §552b(c).

⁴ *Id.* at §552b(d)(3).

meetings. As part of these amendments, the Congress specified that in addition to meetings of the full Board, “all of its subcommittees, and task forces (and any other entity consisting of members of the Board and reporting to the Board) shall be subject to [the Sunshine Act].”⁵

Consequently, during 2003, the Board opened to the public for the first time, its committee and other subdivision meetings.

Audit Requirement

In keeping with its interest in seeing greater openness in Board meetings, the Congress placed another requirement in the NSF Authorization Act directing that the NSF Office of Inspector General (OIG) “conduct an annual audit of the compliance by the Board with [the Sunshine Act].”⁶ The audit is “to examine the proposed and actual content of closed meetings and determine whether the closure of the meetings was consistent with [the Act].”⁷ In a report submitted to the Congress by February 15th of each year, the OIG is to make “recommendations for corrective actions that need to be taken to achieve fuller compliance with [the Sunshine Act] and recommendations on how to ensure public access to the Board’s deliberations.”⁸

This is the third annual audit of the Board’s Sunshine Act activities. Prior years’ audits found a clear intent on the part of the Board to provide for greater access to and increased openness in its meetings. With respect to the Board’s decisions to close meetings, we found in the past two years that the Board properly closed its meetings consistent with the exemptions contained in the Sunshine Act. However, we did note some challenges the Board faced in meeting the Act’s numerous procedural requirements and recommended that the Board develop and implement formal policies and procedures that define the various participants’ roles and responsibilities for complying with the Act’s numerous procedural requirements. The Board agreed with the audit findings of both prior audits.

⁵ Pub. L. No. 107-368 (2002).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Objectives, Scope, and Methodology

In keeping with the statutory audit requirement, the objectives of our audit were to:

- Determine whether the Board's closures of meetings were consistent with the exemptions contained in the Government in the Sunshine Act; and
- Determine whether the Board and its subdivisions are in compliance with the procedural requirements of the Government in the Sunshine Act.

Our audit covered meetings of the Board held during the period January through December 2005. During this timeframe, the Board conducted 98 separate meetings of which 35, or 36 percent, were closed. For the purposes of this audit, we counted each of the various committee, subcommittee, and task force meetings separately, although they typically occur during the same two-day time period. Also, we considered a committee meeting with both an open and closed portion on the same day as two separate meetings: one open and one closed. However, we considered a committee meeting that met for more than one non-consecutive time frame during a single day, and was either entirely open or entirely closed, as one meeting. For example, an open Task Force on Polar Issues meeting from 1:00pm to 3:00pm, with a closed portion from 1:30pm to 2:00pm would count as two meetings. Likewise, an open Education and Human Resources Committee meeting from 9:00am to 10:00am and again from 1:00pm to 2:00pm on the same day, with no closed session, would count as one meeting.

To determine whether the Board complied with the procedural requirements of the Act, we met with agency personnel, and gathered and reviewed documentation for all meetings to determine whether the Board met the Act's requirements for public notice. For each of the 35 closed meetings, we reviewed documentation to determine whether the Board met the applicable Act requirements, including the vote to close and General Counsel certification.

To determine whether the Board closed its meetings in accordance with the Sunshine Act exemptions, we reviewed a sample of 18 of the 35 closed-meeting transcripts and compared them with meeting agendas, General Counsel certifications, and the Board's explanations for closing meetings.

We conducted our work during December 2005 and January 2006 in accordance with generally accepted government auditing standards.

Results of Audit

Contrary to the Sunshine Act's presumption in favor of open meetings, at the time it sets meeting agendas, the Board appears to have included open agenda items in its closed meetings. This occurred because the decision to include agenda items in open or closed sessions necessarily is made in advance of the actual meeting. However, because of a lack of documentation, we are unable to determine whether the Board properly applied the Sunshine Act's prospective standard when deciding upon closed meeting agenda items. As a result, the public may be unable to fully reap the benefits of the open government promised by the Sunshine Act. As such, we recommend that the Board develop, implement, and provide training on a process for documenting the reason for placing each agenda item in a closed meeting rather than an open meeting.

During 2005, the Board again experienced challenges in meeting each of the procedural requirements of the Sunshine Act. We have again attributed these procedural challenges to the lack of formal policies and procedures that were recommended in our two past audits. These policies and procedures would help provide the Board with a structure and protocol for handling the many Sunshine Act issues that arise in the daily conduct of Board operations. Without this structure and protocol, the Board will continue to experience procedural inconsistencies such as inadequate documentation of votes to close meetings and failure to submit required reports. Consequently, we strongly reiterate our previous recommendations that the Board develop, implement, and provide training on such policies and procedures.

Decisions to Close

Presumption in Favor of Open Meetings

The overall presumption of the Sunshine Act is in favor of open meetings. This is consistent with the Act's underlying policy that "the public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government."⁹ However, the Sunshine Act recognizes that circumstances exist in which public disclosure of a particular matter may not be in the government's best interest. As such, the Act has built-in exceptions to its open meeting requirement. Although the starting point for any meeting is always openness, an agency *may*¹⁰ choose to close a meeting if the discussion "is likely" to disclose information contained in one of the Act's ten exemptions.¹¹

The language of the Sunshine Act requiring open meetings "is sweeping, unqualified, and mandatory."¹² Thus, the ten exemptions are to be construed narrowly¹³ so that the greatest amount of openness can be achieved. The Sunshine Act envisions that agencies will engage in a two-step process when deciding whether to close a meeting. The agency must first make a determination whether the expected discussion is likely to reveal information contained in one of the Act's exemptions.¹⁴ Second, the agency must

⁹ Pub. L. No. 94-409, 90 Stat. 1241, at §2 (1976).

¹⁰ "As with FOIA, the exemptions from the Sunshine Act are permissive, not mandatory; an agency *may* close a meeting or any portion of a meeting if it is protected by one of the exemptions. . ." *The Government in the Sunshine Act – An Overview*, 1977 DUKE L. J. 565 (1977) (citations omitted). The one exception to this is mandatory closure under exemption three.

¹¹ See 5 U.S.C. §552b(c) (2005).

¹² *Pacific Legal Fdn v. Council on Environmental Quality*, 636 F.2d 1259, 1265 (D.C. Cir. 1980).

¹³ See, e.g., *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 928 (D.C. Cir. 1982); see also H.R. REP. No. 94-880, pt. 1, at 3 (1976) ("In case of doubt as to whether a portion of a meeting is exempt, the presumption is to be in favor of openness[,] . . . even if a matter falls within an exemption.").

¹⁴ "Congress rejected the approach of establishing "functional categories" of agency business whose discussion could automatically be closed to the public. Instead **the Sunshine Act provides for an examination of each item of business to ascertain whether it may be closed under the terms of one of ten specific exemptions.**" *Common Cause*, 674 F.2d at 932 (emphasis added).

make a determination as to whether public interest requires opening of the meeting even in the face of an exemption.¹⁵

**Closed Agenda Items
Should Have Been
Open**

During 2005, the Board closed 35, or 36 percent of its 98 total meetings for reasons involving 8 of the 10 exemptions contained in the Sunshine Act. Our review of a sample of 18 of the 35 closed meetings found many agenda item discussions that did not appear to contain information that met one of the Sunshine Act's exemptions.

For example, in each of the Executive Committee meetings that we reviewed, the agendas included the item "Specific Personnel Matters." The justification to close these items was that such discussions "would be likely to constitute a clearly unwarranted invasion of personal privacy."¹⁶ However, our review of the closed meeting transcripts did not reveal any discussions that "would be likely to constitute a clearly unwarranted invasion of personal privacy." The discussions were of a very general nature and did not provide personal information. When individual names were used, it was in the context of announcing individuals who had been appointed to particular management positions within the Foundation and there was no invasion of personal privacy. Consequently, it does not appear that any of the actual discussions met the requirements of any Sunshine Act exemptions.

As another example, the agenda for the August 10th closed Committee on Programs and Plans meeting included the single agenda item "Awards and Agreements." The justification to close this item was that such discussion would be likely to: "disclose personal information and constitute a clearly unwarranted invasion of privacy;"¹⁷ "disclose research plans and other related information that are trade secrets, and commercial or financial information obtained from a person that are privileged or confidential;"¹⁸ and "prematurely disclose the position of the NSF on the proposals in question

¹⁵ "In making this decision [to close a meeting], the agency must utilize a balancing process to determine whether 'the public good achieved by opening the meeting out weighs the advantages to be gained by closing it.'" Susan T. Stephenson, *Government in the Sunshine Act: Opening Federal Agency Meetings*, 26 AM. U. L. REV. 154, 173 (1976-1977) (quoting S. Rep No. 354, 94th Cong., 1st Sess. 20 (1975)).

¹⁶ See 5 U.S.C. §552b(c)(6) (2005).

¹⁷ See *Id.*

¹⁸ See *Id.* at §552b(c)(4).

before final negotiations and any determination by the Director to make the awards and so would be likely to frustrate significantly the implementation of the proposed Foundation action.”¹⁹ However, our review of the closed meeting transcript revealed four separate discussions under this “Awards and Agreements” agenda item, two of which did not contain any clearly exempt information. Consequently, it does not appear that these two discussions should have been held during closed session.

Finally, the agenda for the August 10th closed Executive Committee meeting included the item “Future Budgets.” The justification to close this item was that such discussion pertained to “future budgets not yet submitted by the President to the Congress.”²⁰ Our review of the closed meeting transcript revealed that the actual discussion was of “NSF’s intent to make a non-research award of \$2 million to the Human Frontier Science Program.” This was brought as an information item to the Board and required no action. The Foundation was simply stating its intent to make an award. This is an award that NSF has made annually since 1993 and the current award was based on a July 2005 request for annual contribution from the Office of Science and Technology Policy. We see nothing about this discussion to indicate that it meets the “future budget” exemption, or any other Sunshine Act exemption.

Evaluation of Agenda Items Not Available

Including open agenda items in a closed meeting occurred because the decision to include agenda items in open or closed sessions necessarily is made in advance of the actual meeting. The standard for closure in the Sunshine Act is whether an upcoming discussion “is likely” to disclose exempted information.²¹ This standard is to be applied prospectively. However, there is no documentation to show why certain agenda items were placed into closed session rather than open. Without such documentation, we are unable to determine whether the Board properly considered the “is likely” standard when determining what agenda items to include in closed session, and how the exemptions may have applied. Consequently, we can only look at these meetings with 20-20 hindsight and make a determination on

¹⁹ See *id.* at §552b(c)(9)(B).

²⁰ The NSF Act contains a specific exemption for future budgets not yet submitted to the Congress, 42 U.S.C. §1863(k) (2005), which falls within the Sunshine Act’s statutory exemption, 5 U.S.C. §552b(c)(3) (2005).

²¹ 5 U.S.C. at §552b(c) (2005).

whether they were properly closed based solely on the actual content of the discussions.

Board May Lack Openness and Transparency

In closing sessions that should otherwise be open, the Board may not be providing the public with the access intended under the Sunshine Act. In addition, when the Board continues to conduct apparent non-exempt discussions behind closed doors, there is a lack of transparency into Board activities, which can create an appearance that the Board is attempting to hide certain information.

Recommendations

In order to show that it is properly applying the “likely to” standard for using a Sunshine Act exemption when including an agenda item in closed session, we recommend that the Executive Officer of the National Science Board:

- Develop and implement a formal process for determining and documenting the reason for placing each specific agenda item in a closed meeting rather than an open meeting. This should include the exemption relied upon and how the proposed discussion “is likely” to disclose information covered by that exemption. Such documentation should occur at a time when the agenda items have been determined and enough information is available to make an informed decision that is consistent with the Sunshine Act’s overall presumption in favor of open meetings. Additionally, this documentation process should take into account the certification requirement of the Sunshine Act so that the certification is based upon actual agenda items and their justification for being included in a closed meeting;
- Provide in-depth and ongoing training to all affected staff and Board members, both within the Board office and NSF staff, on this documentation process. This training should also cover Sunshine Act exemptions applicable to the Board’s activities and their proper application.

Procedural Compliance

More Consistent Compliance with Procedural Requirements is Needed

The Sunshine Act is replete with detailed procedural requirements that must be followed for both open and closed meetings. The Board is again continuing to experience challenges and difficulties in ensuring that all of the various procedural requirements are met on a consistent basis.

Untimely Public Notice

The Sunshine Act requires the agency to publicly announce the date, time, and place of a meeting, whether the meeting is open or closed, and contact information should more information be requested. The announcement is to be made at least one week before the actual meeting date. In 73 of its 98 meetings (74 percent), the Board met this requirement. However, the Board experienced even greater difficulties in meeting these requirements for *ad hoc* meetings (those that did not occur during a regularly scheduled 2-day session). Only 5 of the 11 (45 percent) *ad hoc* meetings were fully compliant with the public notice requirements.

The most significant problem with public notice compliance this year involves the Sunshine Act requirement that the public notice include “the name and phone number of the official designated by the agency to respond to requests for information about the meeting.”²² Almost all of the web notices for the 2005 meetings did not include proper contact information. It was not until the November 22nd meeting that this information was finally included in the web postings. Consequently, the Board had to rely on its Federal Register postings for full compliance. Unfortunately, the Federal Register postings often are made later than the web postings and do not always meet the “one week before the meeting” requirement of the Sunshine Act. Had the contact information been included in all of the web postings, the Board would have been compliant with the public notice requirement for 95 of its 98 meetings (97 percent).

Inconsistencies in Complying with Voting Requirements

While the Board did conduct votes to close meetings, other aspects of the voting requirement were not met.²³ Out of the 35 closed meetings in 2005, none were fully compliant with all of the voting requirements. First, 21 of the 35 (60 percent) met the requirement that the vote be made public

²² 5 USC §552b(e)(1) (2005).

²³ This section of our report refers only to procedural compliance with the voting requirements of the Sunshine Act. For a discussion of substantive compliance related to votes to close meetings, see *supra* pp. 7-10.

within 1 day. For the remaining 14, the Board either did not make the vote public at all (3 *ad hoc* closed meetings), or made the vote public more than 1 day after the vote (up to 5 days). For the 32 non *ad hoc* meetings for which the vote was made public, the written copy of the vote did not reflect the vote of each member on the question, as required by the Sunshine Act.

Missing General Counsel Certifications For all of its closed meetings that occurred during regularly scheduled two-day sessions, the Board did comply with the Sunshine Act requirement that the General Counsel certify as to the reasons for closing the meetings. However, the Board was unable to provide General Counsel certifications for any of the three *ad hoc* closed meetings.

Failure to Submit Annual Report to Congress The Sunshine Act requires the Board to submit an annual report to the Congress on certain aspects of its open meeting activities, including a tabulation of the number of meetings, the number of days of public notice given for each closed meeting, and the exemptions applied to closed meetings. However, the Board failed to prepare or submit this required report during 2005.²⁴

Procedural Inconsistencies Restrict Openness The purpose of the Sunshine Act is to open up the government's decision-making processes to the public. The procedural aspects of the Sunshine Act are required in order to provide full and accurate information on meeting activities. When these requirements are not met, information is not available. The public and other agency stakeholders may not be fully aware of the details of Board meetings.

For example, if the public notice does not contain the proper contact information, interested members of the public may not be able to get the full information that they desire and thus may not enjoy an open and transparent government. When the Congress does not receive its annual report, it remains uninformed as to an agency's compliance with the Sunshine Act and may be unable to adequately respond to interested constituents about agency activities.

²⁴ After we made the Board aware of this missing report, the Board Office informed us that it submitted its report on 2004 activities in early 2006.

**Formalized Procedures
Can Help Ensure
Compliance**

We believe that many of these challenges and difficulties experienced by the Board in complying with the Sunshine Act are the result of a lack of formal policies and procedures. In our 2003 and 2004 audits of the Board's compliance with the Act, we recommended that the Board develop such formal policies and procedures in order to address these procedural gaps in compliance. While the Board responded positively to our audit recommendations and agreed to develop and implement formal policies, the Board has thus far failed to fully develop and implement this much-needed guidance.

*Current Efforts are
Insufficient*

During 2005, the Board has begun some training on the Sunshine Act. We reviewed the training materials provided to us by the Board Office and while these materials do provide good information on the Sunshine Act, they do not constitute policies and procedures for Sunshine Act compliance that will satisfy our prior audit recommendations.

The training materials consist of a slide presentation and accompanying reference materials. These provide background information on the Sunshine Act and its purpose. They discuss the obligations of the Board under the Act such as conducting meetings in public unless an exemption applies. The materials also discuss instances when the Act would not apply, such as notation voting, as well as the substantive and procedural compliance aspects of the Act. This is primarily a condensation of the Act's provisions. Finally, the materials define various roles related to the Sunshine Act and contain supporting documents such as the Sunshine Act, and the NSF Act.

While these training materials provide useful information on the Sunshine Act and its requirements, they do not constitute "formal policies and procedures to address compliance with the procedural requirements of the Sunshine Act" as recommended in our prior reports.

The purpose of the audit recommendation was to provide the Board with an internal control over Sunshine Act compliance. This was to provide a step-by-step method to help ensure compliance. For example, the Board has had difficulty over the past three years meeting the public notice requirements of the Act, especially with respect to *ad hoc* meetings. The policies and procedures should provide a mechanism for

complying with these requirements. This could consist of a calendar and checklist. The calendar could include the regularly scheduled meetings, which are determined during the prior year, and *ad hoc* meetings could be added as needed. The checklist could include all of the activities that must take place in advance of a meeting. The Board Office could then use the checklist in conjunction with the calendar to work backwards to ensure having timely public notice. For example, if a meeting is going to occur on Thursday, March 16th, public notice must be made by March 9th. If it then takes two days for the web notice to be posted by the webmaster, the web notice must get to the webmaster by March 7th and the Board Office should have it prepared by Monday, March 6th. This may mean that the Executive Secretaries of the various committees and subcommittees need to submit their final agendas to the Board no later than the prior week, in this example, by Wednesday, March 1st.

These policies and procedures need to explicitly spell out all of the activities that must take place and who is responsible for them. The policy should also identify a single individual who holds primary oversight for making sure that all of the activities are accomplished. The training materials do not meet this need.

In addition, the training needs to be holistic and involve all staff with Sunshine Act responsibilities, including Board members. Often, activities performed by some staff will have a direct impact on other staff and overall Sunshine Act compliance. For example, if the Executive Secretaries are late getting agendas submitted to the Board Office, the public notice may be delayed resulting in non-compliance. Consequently, all staff need to be aware of how their responsibilities fit into the big picture. While the most important need is for understanding of individual responsibilities, how those responsibilities work together and impact one another is also crucial.

*Impact of Delay in
Implementing Previous
Recommendations is
Significant*

The impact of the delay in developing and implementing these policies and procedures is more than simply not having a few documents available on a website. As seen during 2005, without a structure and protocol for complying with all of the procedural requirements of the Sunshine Act, important requirements, such as a report to the Congress or General Counsel certifications, are overlooked or forgotten.

The impact of operating without these policies and procedures is significant because it can affect both the Board's level of openness and its access to information. By providing more complete information regarding upcoming meetings and votes and reasons for closing meetings, the Board can better fulfill the Sunshine Act's objective of an open government that is transparent and accountable to the public taxpayer. Formal policies and procedures help ensure that the Board has a structure and process for deciding on Sunshine Act matters, for making information on its activities known and accessible by the public, and for avoiding issues such as insufficient public notice or missing transcripts of closed meetings.

Recommendations

In light of this continuing and crucial need for formal policies and procedures, we once again recommend that the Executive Officer of the National Science Board:

- Establish and meet milestones for the development of formal policies and procedures to address compliance with the procedural requirements of the Sunshine Act. Once again, the guidance should clearly describe all of the procedural requirements for both open and closed meetings, and should define the various roles and responsibilities of both NSF and Board members and staff involved in Sunshine Act compliance. Additionally, it should detail the necessary time frames within which activities must occur. The guidance should specifically address those requirements for which the Board has had difficulty meeting over the past two years, such as timely public notice and timely production of the Board vote and explanation to close, especially for *ad hoc* meetings. It may be appropriate to include in such guidance a sample calendar for the events that must both precede and follow a meeting, and a method such as a detailed checklist for ensuring those dates are met.

- Establish and meet milestones for providing holistic and ongoing training to all affected staff and Board members, both within the Board office and NSF, on the new policies and procedures and Sunshine Act compliance in general. Such training will ensure that individuals who are responsible for and support compliance activities understand both the nature of those activities as well as their importance to Board accountability and openness.

Agency Response

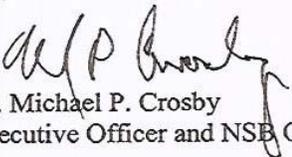
The National Science Board reviewed a draft of this report and responded that it is “committed to fully complying with the Government in the Sunshine Act.” In addition, the Board generally agreed with our findings and will take appropriate action.

We have attached the Board’s response to this report in its entirety as an appendix.

February 12, 2006

MEMORANDUM

TO: Dr. Christine Boesz
Inspector General, NSF

FROM: 
Dr. Michael P. Crosby
Executive Officer and NSB Office Director

SUBJECT: Response to Sunshine Act Audit

Thank you for the opportunity to review and respond to Office of Inspector General (OIG) January 27, 2005 draft Audit of the National Science Board (NSB, the Board) Compliance with the Government in the Sunshine Act for 2005. We were also provided with an excellent briefing of the draft audit report by Ms. Karen Scott (OIG Senior Audit Manager) and Ms. Kristen Stagliano (OIG Attorney Advisor).

The Board is committed to fully complying with the Government in the Sunshine Act. This third annual Sunshine Act audit was an opportunity to verify the Board's compliance and receive additional suggestions on how the Board Office (NSBO) may further enhance its ability to ensure public access to the Board's deliberations.

Since your last audit report in February 2005, the Board Office has taken several actions that we believe will facilitate public access to Board meetings and discussions, including:

- The addition of an attorney advisor in the Board Office staff to serve as a focal point for coordination of compliance with the Sunshine Act's requirements, to develop Board Office procedures to facilitate compliance, and to provide training materials and sessions for Board Office staff on the substantive and procedural requirements of the Sunshine Act.
- Establishment of a Board Office practice of posting 'record vote' notices that include all required information on the Board's Web homepage as stand alone documents within 1 day of the vote (rather than relying on posting of the Board's 'Major Actions and Approvals' reports). We believe this helps to call attention to this required notice. Posting 'record vote' notices in this fashion will also ensure that delays in the preparation of the Major Actions and Approvals report will not affect the timeliness of the record vote postings. Procedures were also implemented to memorialize the vote of each Member during a 'record vote' and the Web publication dates of all Sunshine Act notices.

- Addition of a notice on the Board Office Web homepage describing how the public can access the Board's closed meeting transcripts. Although such affirmative notice is not required by the Sunshine Act, we believe this will help to promote transparency and public awareness of the Board's activities.
- The Board Office is in the process of developing a completely new Web site. When deployed, this Web site will include a conspicuous link directing visitors to a dedicated page for all of the Board's legal notices required by the Sunshine Act and the Federal Advisory Committee Act.

The Board Office agrees that it failed to meet some of its numerous substantive and procedural obligations, particularly during the first half of 2005. We believe this was due to an unexpected delay in hiring of a staff position to serve as a focal point for coordination and training related to Sunshine Act requirements. The Board Office believes that training materials and sessions provided to affected staff and the addition of an attorney advisor to oversee compliance will help to minimize or eliminate these errors in the future.

We always welcome opportunities to improve the efficiency of complying with our legal obligations and appreciate the suggestions you offered. During 2006, we will work to develop and implement a formal process for determining and documenting the reason for placing each specific agenda item in a closed, rather than open, meeting taking into account the standards articulated in the Sunshine Act. We will also continue to refine the Board Office's policies and procedures related to the Sunshine Act and provide updated training to staff on an as-needed basis.

The NSBO has worked closely with OIG, in particular with Ms. Scott and Ms. Stagliano, throughout the audit review. The working relationship between our staffs in this regard has, in my opinion, been very courteous, positive, and productive. We look forward to continued consultation with you and your staff during the development and implementation of our action plan.

If you or your staff have any questions, please feel free to contact me directly.

cc: D. Cureton
S. Fannoney
K. Scott
K. Stagliano
W. Washington