

National Aeronautics and  
Space Administration



**Office of Inspector General**  
Washington, DC 20546-0001

February 9, 2009

**TO:** Associate Administrator for Program Analysis and Evaluation  
Chief Engineer  
General Counsel  
Assistant Administrator for External Relations

**FROM:** Assistant Inspector General for Auditing

**SUBJECT:** Addendum to Final Memorandum on the Standing Review Board for  
the Orion Crew Exploration Vehicle Project (Report No. IG-08-018,  
April 28, 2008)

We requested additional management comments on the subject final memorandum because we did not consider the comments on Recommendations 1.a, 1.b, and 1.c to be responsive. On January 26, 2009, we received additional comments from the Associate Administrator for Program Analysis and Evaluation (PA&E) dated December 18, 2008 (see the Enclosure), that are responsive. Management's response also included an update on the other recommendations. All recommendations are resolved but will remain open pending completion and verification of the corrective actions (except Recommendation 4, which was closed November 12, 2008). Following is a summary of management's comments on the recommendations and our evaluation of the comments.

### ***Recommendation 1.a***

In our draft memorandum, we recommended that the Associate Administrator for PA&E, in coordination with the Office of the General Counsel (OGC) and the Office of the Chief Engineer, suspend the six Orion Standing Review Board (SRB) members that we determined were not independent of the Orion Project from involvement in further SRB activities until an evaluation of the legality and propriety of their membership is concluded.

The Associate Administrator for PA&E stated in his April 2, 2008, response to the draft memorandum that suspension of the six Orion SRB members was unnecessary, as NASA had taken steps to ensure the legality and propriety of the Orion SRB membership. The Associate Administrator also stated that SRB independence standards were being revised and that the Orion SRB members would be subject to those revised standards. The Associate Administrator further stated that disbanding or partially disbanding the Orion SRB would adversely affect the SRB's work and the Orion Project.

We considered management's comments in response to the draft report to be nonresponsive. We recognize that the SRB provides a unique service that is important to

the Orion Project; however, we believe that the six Orion SRB members should not participate in SRB activities until their organizational conflicts of interest can be adequately mitigated. Consequently, in our final memorandum, we requested that the Associate Administrator reconsider his position and provide additional comments on the final memorandum.

The Associate Administrator for PA&E submitted additional comments dated December 18, 2008, stating that the Orion SRB had been placed in an inactive status and that each member's status will be reviewed under a new conflict of interest policy. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

### ***Recommendation 1.b***

In our draft memorandum, we recommended that the Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, evaluate the legality and propriety of allowing non-independent members to serve on the Orion SRB; the evaluation should include an analysis of whether the Orion SRB should be reorganized under the Federal Advisory Committee Act (FACA) and whether the ethical rules for Special Government Employees (SGEs) are implicated.

The Associate Administrator for PA&E stated in his April 2, 2008, response to the draft memorandum that this recommendation was already implemented because, after consultation with the OGC, it was concluded that the Orion SRB would no longer be subject to FACA because its members had been advised to render individual as opposed to consensus advice. The Associate Administrator further stated that the Orion SRB members were not SGEs and, therefore, not subject to the ethical rules for SGEs.

We considered management's comments to be nonresponsive. While rendering individual instead of consensus advice may have appeared to defeat FACA applicability, that applicability is not limited to how the advice is rendered. There are other factors that help determine whether FACA is triggered, such as whether group interaction benefits the process as well as the formality and structure of the group. In addition, directing the SRB members to render individual opinions rather than a consensus opinion is contrary to how the SRB had previously operated. Although we were provided no details on how the SRB would actually operate under this new direction, it is counterintuitive that an SRB designed, organized, and operated in a collective manner can be redirected to operate in a manner that is wholly inconsistent with its original purpose and design without having an adverse impact to the purpose and advantage of that design.

In our final memorandum, we requested that NASA management reconsider its proposed corrective action and provide additional comments. We requested that management provide specific information as to how the SRB will be structured, organized, and managed to further distance itself from the requirements of FACA. We also requested that the comments address the potential impact of not having the SRB provide a consensus opinion.

On November 1, 2008, the Independent Program Assessment Office initiated the Constellation Program and Project SRB Alignment and Continuous Improvement activity and paused all Constellation Program SRBs. During the activity period (November 2008 through February 2009), the Agency is exploring options to transition the SRBs from the configuration of a mix of civil service employees and consultants who provided individual opinions to SRBs composed of civil service employees with support from subject matter experts. The transitioned SRBs will provide a consensus opinion.

The Associate Administrator for PA&E submitted additional comments dated December 18, 2008, stating that the development of a revised SRB independence policy will address the legality and propriety of allowing non-independent members to serve on an SRB. The Associate Administrator also stated that since the issuance of our final memorandum on April 28, 2008, the interim configuration of the Orion SRB had been redesigned to not trigger FACA requirements. Although the Associate Administrator stated that organizing the SRBs under FACA remains an option in discussions with senior management, OGC stated in a meeting held on February 6, 2009, with OIG that the Agency is focusing on three other options. Those options are (1) SRBs composed of all civil service employees who would provide a consensus opinion, (2) SRBs composed of civil service employees, with support from subject matter experts, who would provide a consensus opinion, and (3) SRBs composed of a mix of civil service and non-Federal employees who would render individual opinions rather than a consensus opinion.

The Agency's interim and proposed actions are responsive to the intent of our recommendation that the organization of SRBs be thoroughly evaluated and ethical issues addressed. The recommendation is resolved and will be closed upon completion and verification of management's corrective action.

### ***Recommendation 1.c***

In our draft memorandum, we recommended that the Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, conduct a rigorous analysis of the independence status of each of the SRB members if the determination is made to reorganize the Orion SRB to not implicate FACA.

The Associate Administrator for PA&E concurred in his April 2, 2008, response to the draft memorandum, stating that analysis was ongoing and that SRB activities were being redirected in order to follow the new Agency plan for conducting independence assessments. The Agency would reevaluate the independence status of each Orion SRB member once the Office of PA&E completed its revision of SRB independence standards.

We considered management's comments on the draft report to be nonresponsive. Delaying completion of the analysis of the SRB members' independence until independence standards are revised does not meet the intent of our recommendation, which is to ensure that a rigorous analysis of each member's independence status is conducted. We noted in our memorandum that the situation of the Orion SRB Chair and

five of the SRB members created an organizational conflict of interest in violation of the Federal Acquisition Regulation that management should immediately mitigate.

In our final memorandum, we requested that NASA management provide specific information on how it planned to mitigate the conflict presented by the members' financial interests in accordance with NASA's ethics process and in conjunction with the OGC.

The Associate Administrator for PA&E submitted additional comments dated December 18, 2008, stating that regardless of whether FACA is implicated, SRB members are being reexamined for both personal and organizational conflicts of interest. Therefore, we consider the recommendation to be resolved and will close it upon completion and verification of management's corrective action.

### ***Status of Other Recommendations***

The Associate Administrator for PA&E also provided an update on the status of the remaining resolved, but open recommendations:

- Recommendation 1.d: An Agency team, including representatives from the Office of PA&E, the Office of the Chief Engineer, OGC, and the Office of Procurement, developed a draft revised independence policy that describes the definition of both personal and organizational conflicts of interest. The policy describes the processes for regularly assessing conflicts of interest, approaches toward mitigation plans, and a waiver procedure. The Agency plans to incorporate the draft policy in a revision to NASA Procedural Requirements (NPR) 7120.5D, "NASA Space Flight Program and Project Management Requirements," March 6, 2007.
- Recommendation 2: By March 31, 2009, the Chief Engineer plans to issue a NASA Interim Directive for NPR 7120.5D revising the SRB independence policy.
- Recommendation 3.a: The SRB Handbook is being revised to include a detailed discussion of conflicts of interest and processes for identification and mitigation of conflicts.
- Recommendation 3.b: When reactivated, the Orion SRB will operate in accordance with NPR 7120.5D and the revised SRB Handbook.

Recommendations 1.d, 2, 3.a, and 3.b remain open and will be closed upon completion and verification of management's corrective actions.

In response to the Recommendation 4, the Office of External Relations implemented an annual data call to identify NASA committees that may meet the FACA definition. The first data call was completed in November 2008 and found that no additional

committees met the FACA definition. We reviewed the data call results and closed Recommendation 4 on November 12, 2008.

We appreciate the courtesies extended the audit staff during the review. If you have any questions, or need additional information, please contact Mr. Raymond Tolomeo, Mission Programs and Projects Director, Office of Audits, at 202-358-7227.

signed

Evelyn R. Klemstine

Enclosure

cc:

Director, Independent Program Assessment Office  
Chief Counsel, Langley Research Center

## Management's Additional Comments

National Aeronautics and  
Space Administration  
**Headquarters**  
Washington, DC 20546-0001



December 18, 2008

Reply to Attn of: Office of Program Analysis and Evaluation

TO: Assistant Inspector General for Auditing  
FROM: Associate Administrator for Program Analysis and Evaluation  
SUBJECT: Revised NASA Response to the Office of Inspector General's Final Memorandum on the Standing Review Board for the Orion Crew Exploration Vehicle Project (Report No. IG-08-018; Assignment No. A-07-011-00)

In response to each of the recommendations contained in the Memorandum on the Standing Review Board (SRB) for the Orion Project, we have developed the responses below. These responses are to the 28 April, 2008 Final Memorandum, and reflect policy and process changes since that date. These responses are intended to supersede correspondence between the Office of the Inspector General (OIG) and the Office of Program Analysis and Evaluation (PA&E) after the 28 April, 2008 Final Memorandum, as agreed to by both Offices.

**Recommendation 1a.** The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should suspend the six Orion SRB members that we determined were not independent of the Orion Project from involvement in further SRB activities until an evaluation of the legality and propriety of their membership is concluded.

**Response.** The Orion Standing Review Board has been placed in an inactive state and is being realigned to implement a new conflict of interest policy. All members of the reconfigured Board will be reviewed under the new policy. This approach is also being implemented with the other Constellation SRBs, as part of the new policy implementation and reconfiguration.

**Recommendation 1b.** The Associate Administrator for PA&E, in coordination with the OGC and the Office of Chief Engineer, should evaluate the legality and propriety of allowing non-independent members to serve on the Orion SRB; the evaluation should include an analysis of whether the Orion SRB should be reorganized under FACA and whether the ethical rules for SGEs are implicated.

**Response.** Following the OIG Final Memorandum, the interim configuration of NASA SRBs (including Orion) has been designed to not trigger Federal Adviser Committee Act (FACA) requirements. Organizing SRBs under FACA remains an option in discussions with senior management on SRB end-states. The legality/propriety issue has been addressed in

development of the revised SRB independence policy (see Recommendation 1c, 1d below); specifically, recent case law and emerging guidance from the Government Accountability Office (GAO) have been used to clarify when potential impairments are capable of being mitigated (or not), what mitigation strategies may be acceptable, and under what conditions the Agency might choose to issue waivers and accept the risk of impairment.

**Recommendation 1c.** The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should conduct a rigorous analysis of the independence status of each of the SRB members if the determination is made to reorganize the Orion SRB to not implicate FACA.

**Response.** Regardless of whether FACA is implicated in reconfigured SRB end-states, SRB members are being re-examined for conflict of interest, both personal and organizational, consistent with the approach described in response 1d, below.

**Recommendation 1d.** The Associate Administrator for PA&E, in coordination with the OGC and the Office of the Chief Engineer, should evaluate the purpose, roles, and responsibilities of SRBs established under NPR 7120.5D to determine the optimum approach for accomplishing the SRB mission while ensuring compliance with all applicable Federal and NASA guidance.

**Response.** The Office of Program Analysis and Evaluation concurs as in the 2 April, 2008 initial response. Since the OIG Final Memorandum, an Agency team including representatives from PA&E, the Office of the Chief Engineer (OCE), the Office of the General Counsel (OGC), and the Office of Procurement have developed a draft revised independence policy, clearly describing the definition of conflict of interest (both personal and organizational) as guided by evolving case law and emerging GAO policy. The policy and supporting implementation materials such as the SRB Handbook describe processes for regularly assessing conflict of interest, approaches towards mitigation plans (should mitigation be possible), and waiver procedures for those cases where NASA chooses to accept risk in light of the value individual members might bring to the Agency. In addition to the Headquarters offices listed above, representatives from all Centers' legal offices have participated, as well as the Langley Procurement office, which manages one of the primary SRB support contracts (Science Applications International Corporation's (SAIC) Blanket Purchase Agreement). If approved by senior management, the draft policy will be incorporated in a NASA Interim Directive updating NPR 7120.5D (see Recommendation 2 below). The draft policy was also provided to SAIC in order to ensure that SAIC's Organizational Conflict of Interest (OCI) Avoidance/Mitigation Plan, submitted pursuant to the recently renewed Blanket Purchase Agreement, incorporated this approach. SAIC and the Langley Procurement Office agreed to revisit this OCI Avoidance/Mitigation Plan once the policy was finalized, as necessary, to address any subsequent changes. This BPA and the supporting OCI Avoidance/Mitigation Plan have been provided to OIG as documentation.

**Recommendation 2.** The Chief Engineer should revise NPR 7120.5D, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements to include a more robust discussion of independence resolution.

**Response.** The Office of the Chief Engineer concurs as in the 2 April, 2008 initial response. A NASA Interim Directive, targeted for the first calendar quarter of 2009, will include a number of modifications to NPR 7120.5D, one of which will be the revised SRB independence policy.

**Recommendation 3a.** The Associate Administrator for PA&E should revise the draft SRB Handbook, if necessary, to reflect any revised SRB roles, responsibilities, and membership requirements and to include a more robust discussion of independence resolution.

**Response.** The Office of Program Analysis and Evaluation concurs as in the 2 April, 2008 initial response. The SRB Handbook has been revised in coordination with the OGC to include a detailed discussion of conflicts of interest and processes for identification of conflicts as well as identification of mitigation options (or lack thereof) in individual cases.

**Recommendation 3b.** The Associate Administrator for PA&E should direct IPAO, in coordination with the OGC, to ensure that the Orion SRB is operating in accordance with NPR 7120.5D and the draft SRB Handbook, based on any revisions to the NPR and the SRB Handbook.

**Response.** The Office of Program Analysis and Evaluation concurs as in the 2 April, 2008 initial response. When reactivated, the Orion SRB shall operate in accordance with NPR 7120.5D and the revised SRB Handbook.

**Recommendation 4.** The Assistant Administrator for External Relations, in coordination with the OGC, should develop and implement a plan to identify NASA committees that may meet the definition of a FACA advisory committee and ensure that those committees comply with FACA requirements, if necessary.

**Response.** The Office of External Relations (OER) concurs as in the 2 April, 2008 initial response, and has reported completion of this action on 7 November, 2008. The OER has implemented an annual data call to identify NASA committees that may meet the FACA definition. The results of the first data call, completed in November 2008, found that no additional committees met the FACA definition.

Responsible office will provide the status of the actions described in responses to recommendations 1 and 2 by March 31, 2009.

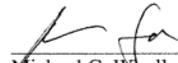
If you have any questions about this response, please contact Dennis Boccippio at (202) 358-4749 or via e-mail at [Dennis.Boccippio@nasa.gov](mailto:Dennis.Boccippio@nasa.gov) or after Friday, January 9, 2009, please contact Tricia Mack at (202) 358-4749 or via email at [tricia.k.mack@nasa.gov](mailto:tricia.k.mack@nasa.gov).



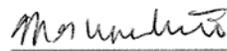
W. Michael Hawes

cc: ESMD / Mr. Cooke  
PA&E / Dr. Ortiz  
Office of Procurement/Mr. McNally

Concurred by:

  
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