



Report to the Chairman, Committee on  
Rules and Administration, U.S. Senate

May 2008

SMITHSONIAN  
INSTITUTION

Board of Regents Has  
Implemented Many  
Governance Reforms,  
but Ensuring  
Accountability and  
Oversight Will Require  
Ongoing Action





Highlights of [GAO-08-632](#), a report to the Chairman, Committee on Rules and Administration, U.S. Senate

## Why GAO Did This Study

The Smithsonian Institution's governing body, the Board of Regents (Board), has developed a set of actions to address governance and accountability breakdowns that came to light in 2007. These actions were aimed at problems in three main areas: (1) executive compensation, benefits, ethics, and operational policies and controls; (2) flow of information to the Board, transparency of Board operations, and relationship with stakeholders; and (3) the Board's responsibilities, structure, and performance. GAO was asked to assess the extent of the Board's progress in each of these areas. GAO obtained information and data from the Board's regents, Smithsonian executives, and other stakeholders and also analyzed other organizations whose boards had faced similar governance challenges.

## What GAO Recommends

GAO recommends that the Board conduct a comprehensive evaluation of its reform actions once these actions are fully implemented. GAO also recommends that in the Board's ongoing deliberations regarding reforms that have yet to be fully implemented, it develop mechanisms to consider and respond to concerns of key stakeholders, develop a clear policy regarding the selection and use of nonregents, and evaluate what actions it can take in the event of neglect of duties by any of its regents. The Board and the Smithsonian concurred with all of the recommendations.

To view the full product, including the scope and methodology, click on [GAO-08-632](#). For more information, contact Mark Goldstein, (202) 512-2834, or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov).

## SMITHSONIAN INSTITUTION

### Board of Regents Has Implemented Many Governance Reforms, but Ensuring Accountability and Oversight Will Require Ongoing Action

## What GAO Found

The Board has implemented several reforms related to executive compensation and benefits, but the development of policies for broader operational matters such as travel, event expenses, and contracting is still under way. Actions implemented include a revised salary range for the Smithsonian's Secretary-elect and a unified compensation policy for other executives. The Smithsonian is reviewing policies related to travel and other matters, including internal controls. Effectively implementing the new policies and procedures developed during these reviews is likely to depend on effectively training staff and establishing accountability, both of which may be challenging due to a level of standardization and requirements that did not exist before.

The Board has completed the actions it proposed for improving its access to information and making its operations more transparent, but actions to improve communication and relationships with stakeholders are less far along. The Board now has avenues for obtaining information directly from senior officials rather than through the Office of the Secretary, and it has taken such steps as creating a Web page to better publicize its operations and decisions. The Board is studying how to improve links with its 30 advisory boards and has developed an overall strategy for communicating with the larger network of stakeholders, but neither action is far enough along to assess its potential for addressing past problems.

The Board has largely completed the actions it proposed for clarifying regents' responsibilities and studying possible changes in its size and structure, but actions for assessing Board performance are still being developed. The Board altered its committee structure but decided that more fundamental changes in its size and composition were unnecessary. To provide further expertise where necessary under the existing structure, the Board is encouraging the addition of nonregents to committees. Thus far, however, the Board has not developed a process for assuring transparency and accountability in selecting nonregents and using them to enhance governance. The Board is also developing a self-assessment process, but it remains to be seen how the Board will hold regents accountable if they neglect their duties. Given the extensiveness of actions taken and still under way, it is likely that the effectiveness of some changes will only be evident over a longer time. The Board does not currently have plans to conduct a broader evaluation of its governance reform actions after such time has passed to determine if the actions taken have addressed governance and accountability problems which led to its reform actions.

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## Abbreviations

|             |                                            |
|-------------|--------------------------------------------|
| Board       | Smithsonian Institution's Board of Regents |
| CFO         | Chief Financial Officer                    |
| FAR         | Federal Acquisition Regulation             |
| FOIA        | Freedom of Information Act                 |
| IRC         | Independent Review Committee               |
| SBV         | Smithsonian Business Ventures              |
| Smithsonian | Smithsonian Institution                    |

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**United States Government Accountability Office**  
Washington, DC 20548

May 15, 2008

The Honorable Dianne Feinstein  
Chairman  
Committee on Rules and Administration  
United States Senate

Dear Madam Chairman:

The Smithsonian Institution (Smithsonian) has been referred to as America's museum, as its museums hold and provide access to irreplaceable national collections in American and natural history, art, and other areas. In addition to its 19 museums, the Smithsonian includes nine research centers, the National Zoological Park, and a number of other programs. Since its establishment in 1846, the Smithsonian has evolved into the world's largest museum complex and research organization; two of its museums, on the National Mall in Washington, D.C., are the most visited in the world. Congress established the Smithsonian in 1846. In fiscal year 2007, about 70 percent of the Smithsonian's operating revenues of approximately \$1 billion came from federal sources, including direct appropriations and government grants and contracts. The rest of its operating revenues came from contributions, earnings from investments and business operations, and other private sources. The act establishing the Smithsonian in 1846 provided that, among other things, the business of the Smithsonian be conducted by a board of regents. Currently, the Board of Regents (Board) is comprised of 17 regents, including 2 ex-officio regents<sup>1</sup>—the Chief Justice and the Vice President of the United States—6 congressional regents, and 9 citizen regents. As the Smithsonian's chief decision-making body, the Board is responsible for the long-term stewardship of the Smithsonian's mission.

In 2007, serious governance challenges for the Board came to light. Following a report from the Smithsonian's Inspector General to the Board on the then- Secretary's compensation package and expenses, and related inquiries, that Secretary resigned. Two subsequent studies were published in June 2007, one by the Board's Governance Committee and the other by

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<sup>1</sup>An ex-officio regent is a regent not by appointment but by virtue of holding a certain office.

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an Independent Review Committee (IRC) created at the Board's request, that identified such governance and accountability breakdowns as the following:

- Policies and internal controls were inadequate in such areas as conflicts of interest, compensation, and travel.
- The Board did not routinely receive or request information necessary to support vigorous deliberation, well-reasoned decision making, and adequate oversight.
- The Board's roles and responsibilities were not clearly defined, leaving the role of the regents subject to interpretation.
- The Board may have lacked sufficient expertise to conduct effective oversight in some areas, and the size and structure of the Board itself may be contributing to this problem.

Both studies recommended changes to address these governance challenges. The Board adopted all 25 of the Governance Committee's recommendations and stated that the IRC's recommendations were, for the most part, encompassed by the Governance Committee's recommendations.<sup>2</sup> The Board also created a scorecard to track the implementation status of the Governance Committee recommendations, which is posted on the Smithsonian's Web site and updated monthly. Several other senior Smithsonian executives resigned over the past year, including the Deputy Secretary and the Chief Executive Officer of Smithsonian Business Ventures, a centralized business entity responsible for the Smithsonian's various business activities.

You asked us to assess the extent of the Board's progress in addressing the areas of concern identified in the Governance Committee and IRC reports. Specifically, we evaluated the Board's actions related to three broad areas of concern: (1) executive compensation, benefits, and expenses, ethics, and operational policies and internal controls; (2) the flow of information to the Board, the transparency of Board operations, and the Board's

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<sup>2</sup>According to the Board's staff, two IRC recommendations were not encompassed by the Governance Committee's recommendations: a recommendation to audit the former Secretary's and senior management's expenses (although the Smithsonian did separately decide to address this recommendation) and a recommendation not clearly directed to the Board, which stated that achieving effective oversight and governance at nonprofit organizations may ultimately require legislative action.

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communication and relationships with stakeholders; and (3) the Board's responsibilities, composition, and performance.

To address these objectives we reviewed relevant laws and regulations and Smithsonian policies, reports, and documents, including the new draft compensation policies; Board meeting minutes; reports regarding Smithsonian advisory boards; a recent consultant report on the size, composition, and structure of the Board; and draft Board assessment materials, among many other documents. To determine the adequacy of proposed changes in Smithsonian policies and practices, we compared the proposed changes to current governance practices in the private and nonprofit sectors and also used GAO's internal control standards and other GAO criteria as appropriate. We compiled current governance practices from several sources, including previous GAO work on governance challenges at several organizations, including the John F. Kennedy Center for the Performing Arts, the Legal Services Corporation, and the Federal Deposit Insurance Corporation; as well as organizations such as BoardSource, Independent Sector, Conference Board, the Museum Trustee Association, the American Association of Museums, and the Council on Foundations, that have compiled current practices in nonprofit governance, and museum governance in particular. We also looked at relevant governance documents and interviewed knowledgeable senior officials from organizations that have recently undergone similar governance reforms, including the American Red Cross, American University, J. Paul Getty Trust, and United Way of America. We chose these organizations because they have had similar governance problems, have conducted a governance review, and have changed their practices or structure; have a similar structure to the Smithsonian, such as consisting of a central or national governing body with multiple programming units and organizations; and face similar stewardship challenges. We did not assess the effectiveness of governance reform efforts at these organizations. We also collected and reviewed a variety of documentation in order to validate that the changes to Smithsonian policies and procedures were actually being carried out, such as reviewing Board meeting minutes to validate that certain senior officials were in attendance and provided input to the Board.

In addition to reviewing relevant documentation, we interviewed current and former regents, senior Smithsonian officials, directors of Smithsonian museums, members of Smithsonian advisory boards, and selected governance experts to discuss their views on the Smithsonian's governance reforms and the appropriateness and potential effectiveness of those reforms. Specifically, we interviewed all of the current citizen

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regents, except the most recently appointed regent; three former citizen regents; four congressional regents; and the primary staff liaisons to the remaining two congressional regents. We also obtained a written response from the Chief Justice to questions we provided. We also interviewed senior Smithsonian officials—such as the Acting Secretary, the Chief Financial Officer (CFO), the General Counsel, and the Inspector General, as well as several other members of Smithsonian’s central management. We interviewed the directors of all of the Smithsonian’s museums, including the National Zoological Park, as well as the chairpersons of the advisory boards of several of these institutions. Finally, we interviewed selected experts in nonprofit governance, including those experts that were advisors to the Board in the governance reform process, and others that we identified through a literature search or were referred to us by other experts in the field.

We conducted this performance audit from May 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I contains more information about our scope and methodology.

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## Results in Brief

The Board has implemented several executive reforms to address concerns about executive compensation, benefits, and expenses, but development of policies and internal controls for broader operational issues such as travel, event expenses, and contracting is still underway, and training and establishing accountability remain challenges. To address concerns about the level of the former Secretary’s compensation, the Board set the Secretary-elect’s compensation significantly lower than that of the former Secretary, using a revised compensation process to do so. Among other actions, the Board also developed a unified compensation policy for all senior officials in the Smithsonian, standardized the leave system for these officials, and developed an overarching code of ethics. The Board has begun a review of policies and internal controls governing various Smithsonian activities. For example, the Board has established some new policies related to travel and event expenses, and the Smithsonian has initiated reviews to consider how to strengthen and improve the Smithsonian’s travel and event expense policies and contracting policies, including for Smithsonian Business Ventures. Effectively implementing the new policies and procedures developed

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during these reviews is likely to depend on effectively training staff and establishing accountability, both of which may be challenging due to a level of standardization and requirements that did not previously exist, among other things.

The Board has completed the actions it proposed for improving its access to information and making its operations more transparent, but actions to improve communication and relationships with stakeholders are not fully implemented. To improve the information it receives, the Board amended its bylaws to require attendance of the General Counsel and Chief Financial Officer at Board meetings, and the Inspector General now has direct access to the Board. The Board also has improved the transparency of information it provides to the public—for example, by creating and regularly updating a governance Web page. By contrast, the Board has not fully implemented its plans to improve communication with its stakeholders, including staff, advisory boards, and the public. For example, the Board currently is studying how to improve its relationship with the Smithsonian’s 30 advisory boards. Some museum directors or advisory board chairs indicated that the Board’s lack of engagement with advisory boards limited its ability to effectively prioritize, strategize, or fundraise due to a lack of understanding of the priorities of the Smithsonian’s museums, research centers, and programs. To make more information available to interested stakeholders and to provide transparency into the working of the Board, the Board plans to hold an annual public meeting. In addition, the Smithsonian is in the process of developing an institution-wide communication strategy. These actions are not far enough along to assess their potential for addressing past problems. Going forward, a challenge for the Board will be to ensure that all actions taken to improve the engagement of advisory boards and other stakeholders include a mechanism by which the Board can—on a regular basis—receive and consider unfiltered, needed information; take appropriate actions in response; and report its progress.

The Board has largely completed the actions it proposed for clarifying regents’ responsibilities and studying possible changes in its size and structure, but actions for assessing Board performance are still being developed. The Board has clarified regents’ roles and responsibilities and has changed its committee structure. Beyond these clarifications, the Board has studied its size, composition, and structure and does not plan to recommend significant structural changes at this time. To address issues related to the lack of diversity of skills and expertise, the Board will seek to encourage the use of nonregent expertise on committees. The Board has not yet developed a process for assuring transparency and

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accountability in selecting nonregents and using them to enhance governance. The Board is developing a self-assessment process to examine its performance, but it is not clear how the Board will hold regents accountable in the event of performance problems, as the assessment process has yet to be implemented, and the Board has no authority to remove regents in the event of persistent neglect of duties. Given the extensiveness of the reforms, as well as other changes at the Smithsonian, including the hiring of a new Secretary, it is likely that some governance reforms will not be completely implemented in 2008, and the effectiveness of some reforms will only be evident over a longer period. The Board currently does not have plans to conduct a broader evaluation of its governance reform efforts after a suitable period of implementation to determine if they have been effective in addressing the governance and accountability breakdowns that occurred. However, the Board has indicated that a future evaluation is a good idea.

To address challenges associated with ongoing implementation of multiple governance reforms, we are recommending that the Board of Regents conduct a comprehensive evaluation of its reform actions once they are fully implemented after a suitable period has passed. We also are recommending that in the Board's ongoing deliberations regarding reforms that have yet to be fully implemented, it (1) develop mechanisms to ensure that it is considering and responding to concerns of key stakeholders; (2) develop a clear policy regarding the selection and use of nonregents; and (3) evaluate what actions it can take in the event of persistent neglect of duties by any of its members. The Board and the Smithsonian concurred with our recommendations.

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## Background

The Smithsonian Institution is a unique and complex organization. Congress created the Smithsonian in 1846 as an independent trust establishment of the United States.<sup>3</sup> Congress did not establish the Smithsonian within any branch of the federal government, and it is not a federal agency unless Congress designates it as such for purposes of a

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<sup>3</sup>The Act of August 10, 1846, to establish the Smithsonian Institution for the Increase and Diffusion of Knowledge Among Men, as amended, is codified at 20 U.S.C. §§ 41-70.

particular law or a federal court determines it to be.<sup>4</sup> The Smithsonian Act provided that the business of the Smithsonian be conducted by a board of regents, and that the Board be drawn from all three branches of government and the private sector. The Act delineates the structure and composition of the Board. Table 1 provides more information on the structure and current membership of the Board.

**Table 1: Membership and Structure of the Board of Regents**

| Type of regent                                                         | Appointment process                                       | Term limit                                                                                                                      | Current regents                                 | Year of appointment to the Board |
|------------------------------------------------------------------------|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|----------------------------------|
| Ex Officio – Chief Justice                                             | Duty of the office                                        | Term limit of the office (possibly life term)                                                                                   | Chief Justice John G. Roberts, Jr. (Chancellor) | 2005                             |
| Ex Officio – Vice President                                            | Duty of the office                                        | Term limit of the office                                                                                                        | Vice President Richard B. Cheney                | 2001                             |
| Congressional Regents – three Members of U.S. House of Representatives | Appointed by Speaker of the U.S. House of Representatives | Coterminous with the terms for which they were elected to the House, and upon reelection, they may be reappointed <sup>a</sup>  | Representative Xavier Becerra                   | 2005                             |
|                                                                        |                                                           |                                                                                                                                 | Representative Sam Johnson                      | 1995                             |
|                                                                        |                                                           |                                                                                                                                 | Representative Doris Matsui                     | 2007                             |
| Congressional Regents – three U.S. Senators                            | Appointed by President Pro Tempore of the U.S. Senate     | Coterminous with the terms for which they were elected to the Senate, and upon reelection, they may be reappointed <sup>a</sup> | Senator Thad Cochran                            | 1995                             |
|                                                                        |                                                           |                                                                                                                                 | Senator Christopher J. Dodd                     | 2007                             |
|                                                                        |                                                           |                                                                                                                                 | Senator Patrick J. Leahy                        | 2001                             |

<sup>4</sup>For example, in the Inspector General Act of 1978, as amended, the Smithsonian is listed as a designated federal agency and accordingly, under the Act the Smithsonian is required to establish an Office of Inspector General and conduct and supervise audits and investigations relating to programs and operations. See 5 U.S.C. App. 3 § 8G(a)(2). Also, the Court held the Smithsonian was a federal agency for the purposes of the Federal Tort Claims Act and therefore subject to its provisions. See *Expeditions Unlimited Aquatic Enterprises, Inc. v. Smithsonian Institution, et al.*, 566 F.2d 289 (D.C. Cir. 1977).

| Type of regent                                                         | Appointment process                                                            | Term limit                                  | Current regents        | Year of appointment to the Board |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------|---------------------------------------------|------------------------|----------------------------------|
| Citizen Regents – two from Washington, D.C., and seven from the states | Approved by the Board of Regents and appointed by joint resolution of Congress | Six years with option to renew another term | Eli Broad              | 2004                             |
|                                                                        |                                                                                |                                             | Phillip Frost          | 2006                             |
|                                                                        |                                                                                |                                             | Shirley Ann Jackson    | 2005                             |
|                                                                        |                                                                                |                                             | Robert P. Kogod        | 2005                             |
|                                                                        |                                                                                |                                             | John W. McCarter       | 2008                             |
|                                                                        |                                                                                |                                             | Roger W. Sant (Chair)  | 2001                             |
|                                                                        |                                                                                |                                             | Alan G. Spoon          | 2000                             |
|                                                                        |                                                                                |                                             | Patricia Q. Stonesifer | 2001                             |
|                                                                        |                                                                                |                                             | Vacant                 |                                  |

Source: GAO presentation of Smithsonian Institution data.

<sup>a</sup>By tradition, two of the three regents apportioned for each chamber of Congress are members of the majority party of that chamber. When the majority of a chamber changes, one regent from the minority party is removed and one regent from the majority party is appointed.

The Board traditionally has elected the Chief Justice of the United States to be the Chancellor of the Board. The Chancellor presides over Board meetings and selected ceremonial occasions, and until recent changes to the role of the Chancellor, had several other leadership responsibilities.

The Board is vested with governing authorities over the Smithsonian<sup>5</sup> and considers matters such as the Smithsonian's budgets and planning documents, new programs and construction proposals, appointments to Smithsonian advisory boards, and a variety of other issues facing the Smithsonian. The Board also has stewardship responsibilities, including ensuring that the Smithsonian's facilities and collections are maintained, and ensuring that the Smithsonian has a funding strategy that provides sufficient funds to support these activities. In recent years, the National Academy of Public Administration, the Smithsonian, and we have reported on the deterioration of the Smithsonian's facilities and the threat posed by this deterioration. For example, in September 2007, we reported that funding challenges at the Smithsonian were affecting facilities' conditions and security, and endangering collections, and that the Smithsonian's cost

<sup>5</sup>For example, 20 U.S.C. §42 establishes the Board's responsibility to conduct the business of the Smithsonian, and 20 U.S.C. §50 provides for the Board to accept specimens and objects of art and for these items to be appropriately classed and arranged.

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estimate for facilities projects had increased to \$2.5 billion from \$2.3 billion in April 2005.<sup>6</sup> In that report, we recommended that the Board perform a comprehensive analysis of alternative funding strategies beyond principally using federal funds to support facilities and submit a report to Congress and the Office of Management and Budget describing a funding strategy for current and future facilities needs.

The Smithsonian manages two different types of funds—federal appropriations and trust funds—which include revenue from donations, grants, revenue-generating activities, interest on investments, and other sources. In some cases, the Smithsonian’s policies related to activities involving the expenditure of federal funds has differed from its policies related to the expenditure of trust funds. For example, in 2006, we reported that the Smithsonian had elected to follow the Federal Acquisition Regulation (FAR) provisions for contracts involving the expenditure of federal funds, while for business contracts that involved neither the expenditure nor receipt of federal funds and for which the FAR is inapplicable, the Smithsonian had elected to follow commercial business practices. About two-thirds of Smithsonian employees, including executives, are paid with federal funds, while other employees are paid with trust funds. Federal employees are subject to the laws, regulations, and policies for federal employment, while trust employees are covered by Smithsonian policies for trust fund employment.

Adding to the complexity of the organization, in 1998, the Board authorized the Secretary of the Smithsonian to reorganize the various business activities within the Smithsonian into a centralized business entity, Smithsonian Business Ventures (SBV). SBV’s mission is to generate revenue from business activities to support the Smithsonian’s mission. The Smithsonian’s business activities include a magazine and museum retail operations.

The governance reform currently under way at the Smithsonian is not unique among nonprofit organizations, or among other major arts and educational institutions. In light of the Sarbanes-Oxley Act of 2002 and governance reform in the corporate world, awareness has grown regarding

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<sup>6</sup> GAO, *Smithsonian Institution: Funding Challenges Affect Facilities’ Conditions and Security, Endangering Collections*, [GAO-07-1127](#) (Washington, D.C.: Sept. 28, 2007).

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the need for improving governance practices in the nonprofit sector.<sup>7</sup> Several major nonprofit organizations, such as the American Red Cross, the J. Paul Getty Trust, and the United Way of America, have recently undergone major governance reform. These efforts were initiated in response to similar problems that were identified at the Smithsonian regarding controls over executive compensation and expenses, and insufficient oversight and leadership by the boards of those institutions. For example, the J. Paul Getty Trust initiated its governance reform in response to similar criticism regarding executive compensation and expenses, limited board oversight of those expenses, and similar issues regarding weaknesses in conflicts-of-interest policies. We have found that governance and accountability breakdowns can result in a lack of trust from donors, grantors, and appropriators, which could ultimately put funding and the organization's credibility at risk.

Both the Smithsonian's Governance Committee report, and the IRC's report highlighted several issues and areas of concern related to governance of the Smithsonian and oversight of Smithsonian management. While the Board accepted the IRC's report, it did not concur with all of the report's findings. Both reports laid out recommendations to improve governance which were adopted by the Board in June 2007.<sup>8</sup> Specifically, these reports highlighted:

- inadequate policies in place and insufficient oversight of and knowledge among regents concerning executive compensation, trust and federal pay systems, leave for senior executives, conflicts of interest regarding service on for-profit boards, travel expenses, event expenses, activities of SBV, and internal financial controls;
- a lack of critical information and relationships necessary to bring forward important issues and concerns and to support vigorous deliberation and well-reasoned decision making on the part of the Board, such as lack of access for senior management to the Board, too much control within the Secretary's office regarding the information available to the Board and the Board's agenda, and a lack of transparency and connection to

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<sup>7</sup>While the Smithsonian, like other nonprofit organizations, is not subject to Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002), it has adopted certain requirements of the Act; for example, the Board's Audit and Review Committee engages in and oversees the services of external, independent auditors and the Board holds executive sessions.

<sup>8</sup>Two IRC recommendations were not encompassed by the Governance Committee's recommendations.

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stakeholders within the Smithsonian (such as museum directors and advisory boards) and to the public at large; and

- IRC's finding that there was insufficient action on the part of the Board to demand critical information needed to conduct adequate oversight of the Smithsonian, which was linked to a number of issues, such as unclear roles and expectations for citizen, congressional, and ex-officio regents; a lack of engagement and participation by some regents; unclear responsibilities of Board committees and a lack of critical committees; a lack of diversity of skills and expertise needed to conduct adequate oversight; inflexible size and structure of the Board; and a lack of accountability of regents with regard to their performance and to fulfilling their fiduciary duties.

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## Board Has Implemented Some Executive and Ethics Reforms, and Has Begun a Review of Policies and Internal Controls, but Implementation Challenges Remain

The Board has implemented several executive reforms to address concerns about executive compensation, benefits, and expenses, and has established an overarching code of ethics applicable to everyone associated with the Smithsonian, but development of policies and internal controls for broader operational matters such as travel, event expenses, and contracting is still under way. Training and establishing accountability remain challenges. The recommendations covered in this section are shown in figure 1. Appendix II provides information on the status of all of the Governance Committee's report recommendations.

**Figure 1: GAO's Assessment of Governance Committee's Recommendations Related to Executive Reforms, Ethics, Travel, and Broader Smithsonian Operations (as of May 2008)**

| Governance Committee recommendation                                                                                                                       | GAO assessment of implementation |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| <b>Executive and ethics reforms</b>                                                                                                                       |                                  |
| Refine the executive compensation process to follow best practices <sup>a</sup>                                                                           | ✓                                |
| Follow process to recommend range for Secretary's compensation package                                                                                    | ✓                                |
| Develop unified compensation policy                                                                                                                       | ✓                                |
| Create leave accrual system for senior trust employees                                                                                                    | ✓                                |
| Develop overarching Smithsonian code of ethics                                                                                                            | ✓                                |
| Establish ethics hotline                                                                                                                                  | ✓                                |
| Develop policy prohibiting senior staff service on for-profit boards                                                                                      | ✓                                |
| Develop database to identify potential conflicts of interest                                                                                              | Delayed                          |
| <b>Executive travel policies</b>                                                                                                                          |                                  |
| Adopt interim policies on travel and event expenses                                                                                                       | ✓                                |
| <b>Policies on broader Smithsonian operations</b>                                                                                                         |                                  |
| Develop expense policies for regent events                                                                                                                | ☑☑☐                              |
| Review internal controls of travel and expense reimbursement                                                                                              | ☑☑☐                              |
| Develop contracting policy                                                                                                                                | ☑☑☐                              |
| Require Smithsonian Business Ventures to follow Smithsonian policies                                                                                      | ☑☑☐                              |
| Conduct comprehensive review of financial reporting and internal controls                                                                                 | ☑☑☐                              |
| ✓ Completed (the recommendation has been implemented)<br>☑☑☐ Steps taken (steps have been taken to implement the recommendation, but more work is needed) |                                  |

Source: GAO presentation and analysis of Smithsonian data.

<sup>a</sup>We confirmed that the executive compensation process that was followed to set the salary range for the next Secretary's compensation package was refined to address many of the IRC's concerns about the previous compensation process, but we did not validate the extent to which this process follows best practices.

**The Board Has Implemented Several Executive and Ethics Reforms**

The Board has implemented reforms related to the Secretary's compensation, executives' compensation, executive leave policies, and conflict-of-interest policies. Regarding the Secretary's compensation, the Board revised the process it used to establish compensation for the

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Secretary-elect (scheduled to assume office in July 2008). This reform was implemented to address concerns about the former Secretary's compensation. According to the IRC, the former Secretary's total compensation equaled \$915,698 in 2007 and was troubling for two reasons. First, it included a housing allowance that reached \$193,000 in 2007, which the IRC concluded did not in fact serve as a housing allowance but as a "packaging device" to provide the Secretary with additional salary. Second, the former Secretary's starting base salary of \$330,000 in 2000 was increased significantly in 2001—and reached \$617,672 in 2007—based in part on compensation studies that the IRC concluded were not objective and were used primarily as a method of justifying substantial compensation increases.

On March 15, 2008, the Board announced that it had selected a new Secretary of the Smithsonian. According to Smithsonian officials, the Secretary-elect's base salary will be \$490,000 as compared to the former Secretary's 2007 base salary of \$617,672. The Secretary-elect's total compensation, including base salary and employer pension contributions, will be \$524,000, considerably lower than the former Secretary's 2007 total compensation of \$915,698.<sup>9</sup> According to a Smithsonian official, the new Secretary will not receive a housing allowance or any additional benefits beyond those provided to all senior trust Smithsonian employees. In setting this salary, the Board was guided by a compensation study that used a methodology that addressed many of the concerns the IRC had had about the previous compensation studies used to set the former Secretary's salary.<sup>10</sup>

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<sup>9</sup>These figures for the former Secretary and the Secretary-elect's total compensation do not include employer contributions to life insurance and long-term disability, which are provided at a salary-based rate to all eligible trust employees—and are the same amounts for the previous Secretary and the Secretary-elect—or the employer contribution to health and dental plans, which are offered to all eligible trust employees.

<sup>10</sup>For example, three of the IRC's specific concerns about the compensation studies used to set the former Secretary's salary were (1) Smithsonian management, rather than the Board, hired the firm that conducted the compensation study; (2) Smithsonian management, rather than the compensation consultants, chose the comparable organizations to be used in the studies; and (3) the comparable organizations used included only a relatively small percentage of public universities—20 percent in one study and 8 percent in a later study—which the IRC considered a more appropriate comparison group to the Smithsonian due to its reliance on public funding. In contrast, the compensation study performed to guide the regents in setting the new Secretary's salary was performed at the request of the Board, the comparable organizations used in the study were chosen by the consultant, and the comparable organizations were made up of 50 percent public universities (with the other 50 percent being museums).

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The Board also has reformed the Smithsonian's executive compensation system by implementing what it refers to as a unified compensation philosophy. This effort involved establishing clear criteria to determine whether the compensation of each trust executive is market based or equivalent to the federal system. This reform grew out of concerns that the Smithsonian had separate employment systems governing its federal, trust, and SBV employees, and that the trust salaries for some positions—in areas such as finance and administration—were unnecessarily higher than those paid in much larger federal agencies.

The Board determined that the Smithsonian should follow the federal guidelines for pay for senior-level positions except for limited instances where the job functions do not exist in the federal sector or there is not a candidate pool in the federal sector—in which case, compensation for the position should be market based. The Board also approved a plan to address the effects of applying the criteria. After applying the criteria, the Smithsonian determined that 38 of its executives were in positions that should follow a federal compensation approach. Of those 38, 19 had salaries above the federal pay cap. According to the plan, the salaries for these 19 positions will be brought in line with the federal pay cap within 5 years.<sup>11</sup> A Smithsonian official stated that the implementation of this recommendation was extensively debated. According to a Smithsonian official, the 5-year transition plan was chosen to avoid the risk of having all of the affected executives leave immediately, which could hurt the Smithsonian; however, a Smithsonian official predicted that some of the affected executives may leave the Smithsonian due to the change in their salaries.

The Board also implemented a recommendation to place all Smithsonian executives on the Smithsonian's existing leave policy. This effectively addressed a concern that some Smithsonian executives were exempt from the generally applicable leave accrual system, and that as a result, the former Secretary and former Deputy Secretary were absent from the Smithsonian for about 400 and 550 workdays, respectively, between 2000 and 2006. On September 30, 2007, the Smithsonian transitioned all these executives to the existing trust leave policy that is equivalent to the federal leave policy for senior executives. The affected executives were provided

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<sup>11</sup>Some of these executive positions are deemed Secretary-designated positions and are hired at the will of the Secretary. Since these positions do not have similar protections as federal positions, they will be eligible for a 9 percent differential above the federal salary caps reflecting that lack of protections.

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with opening leave balances for annual and sick leave according to a formula. According to National Finance Center data, since the leave policy went into effect on September 30, 2007, 33 of the 34 executives had recorded some leave by February 16, 2008.

The Board strengthened its policies related to conflicts of interest by prohibiting for-profit board service by its senior executives and requiring prior approval for service on nonprofit boards by any senior executives. The previous policy resulted in two senior executives, including the former Secretary, serving on for-profit boards, one of which had a contract with the Smithsonian; some regents were unaware of this board service. The Board took action on this issue by creating a conflicts-of-interest policy applicable to senior executives. In addition, the General Counsel now reports to the Board's Audit and Review Committee on senior executives' outside activities. Also, although the Smithsonian has individual codes of ethics for employees, volunteers, regents, and advisory board members, until the governance reform, it had no overarching code for the entire institution. The Board approved a Statement of Values and Code of Ethics in January 2008, which applies to everyone in the Smithsonian community. A few additional efforts to improve the ethics policy are planned, but not yet complete—for example, the creation of a conflicts database. However, after reviewing the new policies and ethics code and comparing them to current industry practices, we believe that the new policies and ethics code follow current industry practices.

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**Smithsonian Established Some New Policies and Initiated Reviews of Policies and Internal Controls, but Implementation of These Efforts Is Likely to Include Challenges**

The Board has established some new policies related to travel and event expenses, and has initiated reviews to consider how to strengthen and improve the Smithsonian's travel and event expense policies and contracting policies, including for SBV. The Board has also initiated a separate review of its internal controls in these areas and on an overall basis. In some cases, new policies have been established in the interim while the final policy is under development. The Smithsonian's CFO stated that the teams addressing the Governance Committee's recommendations in these areas have generally expanded the scope of work beyond what would be required to implement the recommendation to think about what else needs to be done, and the Board has been supportive of this approach. As a result, the implementation of some of these reforms has not yet been completed. Successfully implementing these reforms is likely to include challenges related to training and establishing accountability.

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## Review of Travel Policies

The ongoing effort to reform the Smithsonian's travel policies is in response to concerns about the former Secretary's travel practices and expenses, including a provision in his employment agreement that authorized first-class air travel—and which he and the Board interpreted to include premium travel in other regards as well. In addition, the IRC pointed out that the former Secretary's expenses were not reviewed for reasonableness and raised concerns about his chartering of a private jet, at a cost of \$14,000, to travel to San Antonio, Texas, to receive an award and return to Washington, D.C., the next day to attend a Board committee meeting.

The Board adopted interim policies on travel expenses in April 2007 and adopted them as standing policies in June 2007. Among other things, the standing policies subject all Smithsonian officials and employees to a single Smithsonian-wide policy that is compliant with federal travel regulations—whether the travel is paid for with trust or federal funds—and established that the Smithsonian should not pay or reimburse the cost of travel on chartered aircraft in the absence of demonstrated business necessity. In addition, according to Smithsonian officials, the Acting Secretary's travel expenses are now approved by the CFO's office prior to his travel. A team also is reviewing the Smithsonian's travel policies, with a focus on clarifying the policies and procedures to make it easier for Smithsonian employees to understand and follow them. The effort also is focusing on establishing review and audit processes for travel and expense reimbursement to strengthen internal controls in this area.

## Review of Event Expense Policies

The Board also adopted some new policies on event expenses, while a team is undertaking a broad review of event expense policies. The Board undertook these actions in response to findings in the Inspector General's report related to the former Secretary's entertainment expenses. The issue of event expenses also was raised in late 2007 and early 2008, when the media and some members of Congress expressed concern about the reasonableness of the event expenses surrounding the departure of the former Director of the National Museum of the American Indian. The Board adopted policies that attempted to clarify this issue by stating that Smithsonian funds, including for trust events, should only be used for reasonable expenses in accordance with Smithsonian policies.

In its ongoing review, a Smithsonian team has developed an approach to event expense policies that will divide Smithsonian events into three categories, from the most formal to the least formal, with clearly identified requirements for approvals and authorizations. The new policy will cover both regent events and other Smithsonian events. The team also decided

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that given the variation in size and mission of different Smithsonian museums, research centers, and programs, each may supplement the policy with additional expenditure and approval guidelines specific to their organization. The details of this framework, scheduled to be reviewed by the Audit and Review Committee in May 2008, have yet to be finalized.

#### Review of Contracting Policies

Under the leadership of the Board, the Smithsonian also is reviewing its contracting policies. This effort stemmed from concerns that the Smithsonian had entered into confidential business contracts that appeared to have been awarded in a manner not consistent with contracting standards generally applicable in the public sector. For the contracting review, a team has worked to formally document Smithsonian contracting policies and procedures, and is clarifying any exceptions to following the FAR. The team has drafted a contracting policy and is working to develop a set of handbooks to further explicate specific areas of contracting.

#### Review of SBV Policies

Regarding SBV's policies, a team has reviewed Smithsonian and SBV policies to determine which Smithsonian-wide policies are applicable to SBV and under which circumstances SBV should deviate from Smithsonian policies. This effort came out of concerns about the propriety of SBV policies and activities. When SBV was created in 1999 to consolidate and improve Smithsonian business activities, it was not subject to all Smithsonian policies. According to the CFO, the team that examined SBV's policies found only three SBV policies that are not consistent with relevant Smithsonian-wide policies and they all involve financial or payroll systems SBV uses that differ from Smithsonian systems.<sup>12</sup> The team has drafted a new process by which SBV can request an exception to Smithsonian policies that was scheduled to be implemented in April 2008. In addition, the Acting Secretary created a task

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<sup>12</sup>According to the CFO, SBV's travel policy had always been generally aligned with Smithsonian and federal travel policies, except for minor divergences, and SBV already has changed its travel policy so that it is now fully in line with federal travel regulations. According to Smithsonian officials, in addition to the work done by the CFO team, the Compensation and Human Resources Committee asked for a review of SBV's human resources practices. To avoid duplication of work, that area was not reviewed by the CFO team. The findings of that review were that SBV conformed to established policies except in the areas of positions classification, pay administration, hours of duty for Sunday pay, and employee conduct. According to Smithsonian officials, the latter two are minor differences, while the first two represent the cornerstones of the pay banding system in place in SBV. The Committee determined that these variances were permissible.

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force that recommended significant changes to SBV, such as restructuring and the creation of a uniform revenue-sharing formula. The Board approved these recommendations in January 2008.

## Review of Internal Controls

Another team, at the direction of the Board, is examining the appropriateness of Smithsonian internal controls across the Smithsonian's operations. This reform effort relates to concerns about whether the Smithsonian had appropriate policies and an effective process for enforcing and monitoring compliance with its policies. Furthermore, a management letter from the Smithsonian's external auditor based on the Smithsonian's fiscal year 2006 financial statement audit cited inadequate accounting resources and staff as a "reportable condition," an internal control weakness. The Smithsonian has defined internal control as a process designed to provide reasonable assurance of the Smithsonian's ability to achieve and sustain effective and efficient operations, reliable financial reporting, and compliance with applicable laws, regulations, and policies.<sup>13</sup> To implement this review of internal controls, the team identified a core set of 16 critical processes where there is financial risk—including processes related to travel and event expenses, contracting, SBV, and other areas such as financial reporting and federal and trust funds control—and developed a framework with which to analyze each process. The internal control framework for these reviews is closely aligned with the framework established by our *Standards for Internal Control in Federal Government*.<sup>14</sup> In response to the outside auditor's concerns about the CFO's resources, the Smithsonian is in the process of a phased hiring of 10 additional accountants. According to the CFO, funding has been attained for 8 of the 10 positions and has been requested for the last 2 positions for fiscal year 2009.

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<sup>13</sup>This definition is very similar to the definition we have established, which states that internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. See GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#). (Washington, D.C.: November 1999).

<sup>14</sup>The Smithsonian's five activities are described as establishing a proper control environment; assessing risks to the achievement of the Smithsonian's objectives; practicing preventive and detective control activities; communicating up, down, and across the organization; and monitoring internal control performance over time to determine its effectiveness. Our five standards for internal control include control environment, risk assessment, control activities, information and communications, and monitoring. See [GAO/AIMD-00-21.3.1](#).

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## Implementation of New Policies and Procedures Will Be Challenging

Effectively implementing the new policies and procedures developed during these review efforts is likely to depend on effectively training Smithsonian staff at all levels and on effectively establishing accountability, both of which may be challenging for the Smithsonian. The implementation of some of these reforms is scheduled to stretch beyond 2008; Smithsonian officials estimated that reforms related to travel expenses and SBV policies would be fully implemented in the third quarter of 2008, which will provide an important basis for taking further action to strengthen the Smithsonian's internal controls. According to Smithsonian officials, the event expense policy and contracting reforms are scheduled to be fully implemented by the end of 2008. The internal control recommendations are scheduled to be approved by the end of 2008, with the implementation of the approved recommendations scheduled to take place in 2009.

Several of these efforts are likely to lead to a level of standardization or requirements that did not exist before, which must be implemented by staff at many levels and throughout many of the Smithsonian's museums, research centers, programs, and central offices. Smithsonian officials acknowledged that effectively training staff on some of the new policies is important and likely to be challenging. For example, according to Smithsonian officials, new requirements and standardization related to the changes in the Smithsonian's events policy may cause confusion and resistance from some Smithsonian staff, which could make training challenging. According to a Smithsonian official, training is also important to the success of the travel policy reforms. This official stated that while the vast majority of Smithsonian staff are trying to follow the rules regarding travel, the rules are complicated, and Smithsonian staff who are creating travel requests at museums, research centers, or programs may not understand the complexity of the rules as they apply to specific situations.

Establishing accountability mechanisms to monitor whether new policies are followed is also important for the success of these efforts—and likely to be an ongoing challenge. Accountability represents the processes, mechanisms, and other means by which an entity's management carries out its stewardship and responsibility for resources and performance. Smithsonian officials emphasized that the teams undertaking the reviews of Smithsonian policies are considering how to best establish accountability processes and mechanisms to ensure compliance with new policies. However, the Smithsonian's ongoing efforts to establish accountability for travel expenses illustrate challenges related to

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determining how to monitor the compliance of top executives and how to effectively establish audit processes given limited resources.

To monitor the compliance of top executives, the CFO now approves the Secretary's travel spending in advance, which did not happen before, and the undersecretaries' offices review the appropriate directors' travel in advance, as was always the case. Prior to the reforms, the Secretary's anticipated travel expenses were not reviewed prior to travel. Under this change, the Secretary's travel is being approved by a subordinate—the CFO. According to Smithsonian officials, the Smithsonian decided on this policy because the CFO has direct access to the Board, and through informal benchmarking it found that some other federal agencies either provided the agency head with blanket travel authorizations, which the Smithsonian did not want to do, or had the agency head's travel approved by the executive secretary, a position that does not exist at the Smithsonian. The CFO stated that to supplement this process, she is planning to hire someone to support posttravel audits of the Secretary, executives, and the entire Smithsonian.

The Smithsonian has not yet determined the extent to which the Board will review the travel expenses of the Secretary and other executives. Although the Governance Committee's recommendation in this area calls for the Audit and Review Committee to review the Secretary's travel expenses and to report to the full Board at least annually on these expenses, the process by which this will occur on an ongoing basis has not yet been established. According to Smithsonian officials, the Board did review the Secretary's travel in January 2008, and a team is considering a posttravel audit approach that would include 100 percent travel voucher audits for all senior executives with vouchers greater than \$2,500. The team working on this issue also will recommend how much information from travel reviews or audits is to be provided to the Audit and Review Committee. The new processes are scheduled to be implemented by the end of the third quarter of 2008. According to officials at the J. Paul Getty Trust, who told us that the Trust faced some similar governance issues over the expenses of a previous chief executive officer, the Chair of the J. Paul Getty Trust's Board now reviews the chief executive officer's travel expenses on a quarterly basis. In addition, its audit committee receives quarterly reports on the travel expenses of the chief executive officer and nine senior directors.

Another ongoing challenge for the Smithsonian is implementing effective accountability measures within limited resources. For example, the CFO stated that while the Smithsonian had a long-standing practice of quarterly

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posttravel compliance reviews of a sample of travel activity, the Smithsonian has not been able to complete these reviews on a quarterly basis since the second quarter of 2004—well prior to the governance problems identified by the Governance Committee. While the Smithsonian has completed assorted travel-related reviews, including checks for duplicative payments and senior executive travel reviews, it has not renewed its post-travel voucher audits. As described above, the outside auditor’s management letter that accompanied the Smithsonian’s fiscal year 2006 financial statement audit cited inadequate accounting resources and staff as a reportable condition, and a team is working to address this through hiring more accountants. Establishing accountability is especially important because among the governance problems identified by the IRC were that the Smithsonian did not comply with its existing policies and procedures with respect to accounting for expenses, and the former Smithsonian Secretary interpreted a Smithsonian policy authorizing his first-class air travel to qualify him for first class accommodations as well—despite Smithsonian policies to the contrary. The fact that the Inspector General found that the former Director of the Smithsonian’s Latino Center had violated Smithsonian policies related to contracting, acceptance of gifts from outside sources, and travel expenses, among other things, also illustrates the importance of establishing effective accountability mechanisms in these and other areas.

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**Board Has  
Implemented Reforms  
to Improve  
Information and  
Transparency; Efforts  
to Enhance  
Communication Are  
Not Fully  
Implemented**

The Board has completed the actions it proposed for improving its access to information and making its operations more transparent, but actions to improve communication and relationships with stakeholders are not fully implemented. Going forward, a challenge for the Board will be to ensure that all actions taken to improve the engagement of advisory boards and other stakeholders include a mechanism by which the Board can—on a regular basis—receive and consider unfiltered, needed information; take appropriate actions in response; and report its progress. The recommendations covered in this section are shown in figure 2. Appendix II provides the status of all of the Governance Committee’s report recommendations.

**Figure 2: GAO's Assessment of Governance Committee's Recommendations Related to Information, Transparency, and Communication (as of May 2008)**

| Governance Committee recommendation                                                                                                                                                                                                                     | GAO assessment of implementation |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| <b>Access of senior officials to the Board and level of information available to the Board</b>                                                                                                                                                          |                                  |
| General Counsel to have direct access to Board                                                                                                                                                                                                          | ✓                                |
| Board review sufficiency of General Counsel resources                                                                                                                                                                                                   | ✓                                |
| Chief Financial Officer to have direct access to Board                                                                                                                                                                                                  | ✓                                |
| Board review sufficiency of CFO resources                                                                                                                                                                                                               | ✓                                |
| Inspector General to have direct access to Board                                                                                                                                                                                                        | ✓                                |
| Board review sufficiency of Inspector General resources                                                                                                                                                                                                 | ✓                                |
| Inspector General to relocate to downtown Washington                                                                                                                                                                                                    | ✓                                |
| Establish independent regent staff                                                                                                                                                                                                                      | ✓                                |
| <b>Transparency</b>                                                                                                                                                                                                                                     |                                  |
| Schedule at least four business meetings annually                                                                                                                                                                                                       | ✓                                |
| Revise how minutes are taken                                                                                                                                                                                                                            | ✓                                |
| Secretary to delegate corporate secretarial duties to General Counsel                                                                                                                                                                                   | ✓                                |
| Develop Freedom of Information Act policy                                                                                                                                                                                                               | ✓                                |
| Launch regents' public Web page                                                                                                                                                                                                                         | ✓                                |
| <b>Communication and stakeholder relationships</b>                                                                                                                                                                                                      |                                  |
| Enhance role of advisory boards                                                                                                                                                                                                                         | 🔍                                |
| Develop strategy to increase stakeholder access to Smithsonian information                                                                                                                                                                              | ✓                                |
| Create regent annual public forum                                                                                                                                                                                                                       | ☑☑☐                              |
| <p>✓ Completed (the recommendation has been implemented)</p> <p>🔍 Under study (implementation of the recommendation is under further study)</p> <p>☑☑☐ Steps taken (steps have been taken to implement the recommendation, but more work is needed)</p> |                                  |

Source: GAO presentation and analysis of Smithsonian data.

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## Board Has Taken Actions to Improve Information Available to It, and the Transparency of Its Activities

The Board formally amended its bylaws to require attendance of the General Counsel and the CFO, or their designees, at Board meetings. Also, the reporting relationship for the Inspector General was changed from the Secretary to the Board, and the Audit and Review Committee's charter was amended to reflect this change. These changes were in response to concerns that the Board was not developing relationships necessary to allow Smithsonian senior officials or staff to bring forward information of concern to them. Our review of Board meeting minutes shows that the General Counsel, CFO, and Inspector General have attended all full Board meetings since the changes were made and have provided information and raised concerns to the Board. Based on our interviews with the General Counsel, CFO, and Inspector General, as well as regents and other officials both before and after the changes were initiated, the changes have generally improved access and communication and strengthened reporting relationships and governance reform efforts. For example, the General Counsel and CFO have been working with the Board's committees in carrying out governance reforms related to ethics and contracting policies, respectively.

The Board also created an independent Office of the Regents with staff dedicated and reporting to the Board in order to better control the agenda of the Board and the level of information available to the Board. The regents now have a greater role in determining which matters warrant the Board's time and attention, decisions that were previously largely made within the office of the former Secretary. This is an important change in the Board's practice because it will serve to help prevent any future Secretary from attempting to control the level of information provided to the Board as the Governance Committee's and IRC's reports indicated the previous Secretary had done.

The Acting Secretary designated the General Counsel as corporate secretary who, among other duties, officially records the minutes of all Board meetings—similar to practices of other nonprofit organizations. Since November 2007, minutes of most Board meetings, including committees, have generally been recorded by the corporate secretary or his staff and are more thorough than they were previously and include more context about information presented to the Board during the meeting.<sup>15</sup> For example, the reports of Board committees are more detailed

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<sup>15</sup>The CFO attends all meetings of the Audit and Review and Finance and Investment Committees' meetings and records those meetings' minutes.

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than previously. We also found that Board meeting minutes have been improved to capture more deliberation than they did previously, which will likely serve to help improve transparency of the Board's actions.

Although the Smithsonian is not subject to the Freedom of Information Act (FOIA), Smithsonian officials told us they follow the principles of FOIA when fielding the public's requests for access to records. The Smithsonian created a FOIA policy in November 2007 to formalize and clarify its records access policy. This change came about in response to criticism that there was confusion as to which FOIA principles applied to the Smithsonian. According to the General Counsel, the Board adopted a FOIA policy to formally articulate and clarify the Smithsonian's policy on public access to Smithsonian records. We compared the Smithsonian's FOIA policy with FOIA itself and found that the Smithsonian's policy is consistent. The Smithsonian articulates its public records' policy and establishes exceptions or cases in which documentation would likely not be provided, for example, certain commercial or personal data. According to the General Counsel, contracts negotiated since this policy was created no longer contain blanket confidentiality provisions. Furthermore, the Smithsonian intends to remove its FOIA policy provision authorizing the Secretary to carve out additional exceptions. The formulation of this policy should result in less confusion regarding the public's access to records and provide greater transparency.

Finally, the Board created a Web page dedicated to governance to increase the public's access to information and improve transparency. Information posted by the Board relates to its structure, membership, and functions. For example, the Board has posted minutes, committee assignments, reports to the Board, and a document tracking the governance reform efforts, which is updated monthly. These changes were made in response to criticisms about the lack of transparency regarding governance at the Smithsonian following the recent governance problems. The Smithsonian has improved the amount of governance information available to the public, and by comparison, generally has more governance content available to the public than some other nonprofit organizations' Web sites. The Board also is planning to post additional information in an effort to improve the transparency of the Board's policies and actions. For example, according to a Smithsonian official, the executive compensation study which describes the benchmarking used to determine the salary range for the new Secretary, committee meeting minutes, and information regarding criteria for regent nomination, eventually will be posted to the Web page.

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## The Board Has a Study Under Way on How to Improve Its Relationship with Advisory Boards

In one effort to improve governance through strengthened stakeholder relationships, the Board is studying how to improve the link between the Board and the Smithsonian's 30 advisory boards, which include a national advisory board as well as advisory boards that focus on individual museums, research centers, or programs. As the Board's study and recommendations on this issue have not yet occurred, it is too soon to fully evaluate the Board's efforts or conclusions. Past efforts to enhance this relationship have been limited, and some directors and advisory board chairs expressed ongoing concerns about the relationship.

Most advisory boards (except for those with mandated statutory authority) have no independent governance function, and all are subject to the authority of the Board.<sup>16</sup> There is considerable variability among advisory boards, reflecting the differences in how the boards came into being, their missions, their bylaws, and the entities they serve. Their primary purpose is to provide advice, support, and expertise to the directors of museums, research centers, and programs, as well as to the Board and Secretary. For example, some advisory board chairs we spoke with assist their museums, research centers, or programs with acquisitions, program development, strategic planning, or fundraising, among other things. According to the Governance Committee's report, the advisory boards provide a key link between the Board and the public and a direct connection to the museums. Some advisory boards include a regent, while most do not.

The Board has not always fully implemented past recommendations to enhance the relationship between the Board and advisory boards. A 2002 internal Smithsonian study found that the advisory boards were an underutilized asset and recommended, among other things, that each advisory board should submit a report to the regents every 3 years on its museum or facility on a rotating basis, and the Board should respond in writing to these reports. In response to this recommendation, the Smithsonian implemented the practice of having a subset of advisory boards submit a paper to the Board for its meetings starting in September 2003, with the idea that each advisory board would report every 3 years. However, the second half of the internal recommendation, that the regents

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<sup>16</sup>The Smithsonian is not subject to the Federal Advisory Committee Act, which requires federal agencies that sponsor federal advisory committees and have at least one member that is not a federal employee to comply with requirements for establishing and managing advisory committees. See 5 U.S.C. App. 2.

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should respond in writing to the papers, was never implemented. The practice was discontinued after January 2007.

Our work suggests a continued broad level of concern over the lack of engagement of the regents with advisory boards. Nine of the 10 advisory board chairs we spoke with stated that they had had little to no direct contact with the Board. Although 2 of the 10 advisory board chairs we spoke with were generally satisfied with the current level of interaction between the Board of Regents and the advisory boards, 6 of the advisory board chairs we spoke with were not.<sup>17</sup> Some of the museum directors with whom we spoke also raised concerns about the current relationship between the advisory boards and the Board, and the majority of the museum directors see additional value in enhancing the relationship between the Board and the advisory boards. Negative effects of the current relationship described by several advisory board chairs or museum directors included concerns that the Board's lack of understanding of individual museums, research centers, and programs reduces the Board's ability to effectively oversee the prioritizing of the Smithsonian's budget, limits the effectiveness of the Smithsonian's fundraising efforts, and limits the Board's ability to articulate a unifying vision for the Smithsonian to strengthen its mission and better leverage its future potential. According to Smithsonian officials, the Chair of Smithsonian's National Board, which is a Smithsonian-wide advisory board, attends all Board meetings and to the extent that advisory boards interact with the National Board, is therefore an existing vehicle for communication between advisory boards and regents. However, most of the advisory board chairs we spoke with did not think that the National Board Chair served as a liaison between the advisory boards and the Board of Regents.

The Smithsonian has taken some steps to rethink this relationship. In January 2008, the National Board changed the agenda of an annual meeting to which it invites all advisory board chairs to include roundtable discussions, a luncheon with the Acting Secretary, and a presentation by a regent. According to Smithsonian officials and the two advisory board chairs we spoke with about this meeting, the meeting was positive. However, the two advisory board chairs we spoke to stated that the meeting focused on enhancing the relationship among advisory boards rather than on what they saw as a remaining need to enhance the

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<sup>17</sup>The other two advisory board chairs we spoke with did not comment on this issue.

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engagement of the regents with the advisory boards and the museums, research centers, or programs they represent. Going forward, according to a Smithsonian official, Office of the Regents' staff will attend business meetings of the advisory boards to serve as direct liaisons to those boards and the regents.

Four organizations we spoke with that have undergone governance reforms and that, like the Smithsonian, have a structure that includes a number of units, described to us various models they have developed to engage their advisory boards and obtain their input. For example, the United Way of America, which in reforming its governance in 2000 moved away from having members of a number of local affiliates as board members, now has a council of its chapter boards that provides advice to the chief executive officer and whose concerns are communicated to the board at an annual meeting. The American Red Cross holds an annual convention at which its chapter boards may interact with its governing board. American University has representatives from different constituents provide input to board committees. These representatives also may attend board meetings. After its governance reforms, the J. Paul Getty Trust, a much smaller organization, increased communication between its board and the four unit heads by inviting them to attend and participate in board meetings. A noticeable similarity of the way that these four organizations engage and obtain input from their constituent parts is that they all have a mechanism whereby the governing board engages in personal interaction with these constituent representatives on a regular basis.

Directors and advisory board chairs we spoke with had a variety of suggestions for improving the relationship between the advisory boards and the Board. Some suggestions sought to help regents thoroughly understand each museum, research center, or program—for example, by having a regent serve on each advisory board or having a regent hold regular discussions with the director or advisory board chair. Other suggestions included inviting advisory board chairs to the Board's meetings or having advisory board representation on the Board. Any actions taken to improve the relationship between the Board and the advisory boards will involve balancing the regents' time demands with ensuring that the Board has a strong enough understanding and relationship with the museums, research facilities, and programs it governs to effectively prioritize the Smithsonian's budget, encourage fundraising efforts, and strengthen the Smithsonian's mission.

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## Plans for Annual Public Meeting and Communication Strategy Are Not Fully Implemented

The Board is currently developing a plan for an annual public meeting to enable interested stakeholders to address information and make inquiries directly to the Board. This change is being considered in response to criticisms about the lack of transparency regarding governance at the Smithsonian following the recent incidents of governance and accountability breakdowns. According to the Governance Committee's report, this annual meeting should be an opportunity for the Board not only to disseminate information, but also for the Board to receive information and input from interested stakeholders including the public, Smithsonian staff, and others to help inform the Board's decision making. Originally planned for June 2008, the Board's Chief of Staff told us that, as of May 2008, plans have not yet been fully developed and, because the new Secretary's term begins on July 1, the Board plans to hold the public meeting after the new Secretary has begun his service, at either the Board's September 2008 or November 2008 meeting.<sup>18</sup> The Board has enlisted a governance consultant to provide technical assistance in developing the meeting agenda and is planning for the meeting to focus on specific topics well-suited for stakeholder input, for example, strategic planning or the future of the Arts and Industries Building.

Also in response to criticisms regarding a lack of communication and transparency at the Smithsonian, the Smithsonian's Director of Communication and Public Affairs led a team to develop a strategy to increase available information about the Board's and Smithsonian activities and operations to identified stakeholders, such as senior management, staff, and the public. The Governance Committee's report directed that the communication strategy be modeled after best practices in the federal government, nonprofit organizations, and universities. The Governance Committee's recommendations for the communication strategy appear to be in line with practices we have identified for federal agencies undergoing major transformations.<sup>19</sup> For example, the Governance Committee recommended that the strategy include (1) mechanisms to foster communication between and among senior management and regents, staff, and other stakeholders; (2) a framework to ensure effective congressional outreach and information; and (3) a plan to ensure all stakeholder constituencies are routinely informed of important

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<sup>18</sup>The Board rescheduled its June 2008 meeting to November 2008.

<sup>19</sup>GAO, *Highlights of a GAO Forum: Mergers and Transformations: Lessons Learned for a Department of Homeland Security and Other Federal Agencies*, [GAO-03-293SP](#) (Washington, D.C.: Nov. 14, 2002).

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decisions and have opportunity to provide comments or information to the Board and management. Our work similarly suggests that an effective communication plan should reach out to all employees, customers, and stakeholders and seek to genuinely engage them; communication should facilitate a two-way exchange of information; and it is important for feedback from stakeholders to be considered, and appropriate actions made in response and progress reported.<sup>20</sup>

Originally scheduled to be complete in December 2007, the Smithsonian's communication strategy was finalized and approved by the Board on May 5, 2008. Because this effort is not yet fully implemented, we were not able to assess the communication strategy in its entirety, and it remains to be seen how effective the communication strategy will be. However, the team has taken a number of steps thus far. For example, the team has defined stakeholders, analyzed existing communication processes, performed broad stakeholder surveys and analyses, and developed a communication plan. Officials told us that among issues the team is still considering is what information stakeholders most need. The team also is seeking to avoid duplication of efforts; for example, where there are already multiple avenues for receiving information, the team will consider whether tools such as a hotline or a public ombudsman are necessary. A challenge going forward will be to ensure that actions taken to improve communication with stakeholders include a mechanism by which the Board can—on a regular basis—receive and consider unfiltered, needed information; take appropriate actions in response; and report its progress.

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<sup>20</sup>GAO, *Architect of the Capital: Committed, Sustained Leadership Needed to Continue Progress*, [GAO-07-407](#) (Washington, D.C.: Feb. 28, 2007).

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## Board Has Taken Actions to Clarify Roles and Responsibilities and Studied Possible Changes in Its Composition, but Establishing Accountability Remains a Challenge

The Board has largely completed the actions it proposed for clarifying regents' responsibilities and studying possible changes in its size and structure, but actions for assessing Board performance are still being developed. The Board has not yet developed a process for assuring transparency and accountability in selecting nonregents and using them to enhance governance. The Board is developing a self-assessment process to examine its performance, but it is not clear how the Board will hold regents accountable in the event of performance problems. The Board does not currently have plans to conduct a broader evaluation of its governance reform efforts after a suitable period of implementation to determine if they have been effective in addressing the governance and accountability breakdowns that occurred. The recommendations covered in this section are shown in figure 3. Appendix II provides the status of all of the Governance Committee's report recommendations.

**Figure 3: GAO's Assessment of Governance Committee's Recommendations Related to Board's Roles and Responsibilities, Composition, and Performance Assessment (as of May 2008)**

| Governance Committee recommendation                                                                                                                       | GAO assessment of implementation |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| <b>Roles and responsibilities</b>                                                                                                                         |                                  |
| Adopt description of duties and responsibilities of all regents                                                                                           | ✓                                |
| Adopt duties and responsibilities of Chair and Chancellor                                                                                                 | ✓                                |
| Provide for election of new Chair                                                                                                                         | ✓                                |
| Develop Board orientation process                                                                                                                         | ✓✓□                              |
| Develop opportunities to provide strategic direction in development of budget priorities                                                                  | ✓                                |
| <b>Structure and composition</b>                                                                                                                          |                                  |
| Each committee to review and revise charters                                                                                                              | ✓✓□                              |
| New leadership appointed for each committee                                                                                                               | ✓                                |
| Create standing committee on Facilities Revitalization                                                                                                    | ✓                                |
| Review existing appointment procedures to existing committees                                                                                             | ✓✓□                              |
| Create criteria for new citizen regents                                                                                                                   | ✓                                |
| Examine board structure                                                                                                                                   | ✓                                |
| <b>Assessment</b>                                                                                                                                         |                                  |
| Develop regents' assessment process                                                                                                                       | ✓✓□                              |
| ✓ Completed (the recommendation has been implemented)<br>✓✓□ Steps taken (steps have been taken to implement the recommendation, but more work is needed) |                                  |

Source: GAO presentation and analysis of Smithsonian data.

## Actions to Clarify Roles and Responsibilities for All Regents, and Leadership of the Board Are Largely Completed

As part of its governance reform efforts, the Board adopted a specific set of duties and expectations for all regents, which is a key step in governance reform. Previously, the roles and responsibilities of regents were not clearly and explicitly defined, which, in part, led to the lack of oversight and awareness evidenced in recent problems at the institution. Elements of the regents' written duties and responsibilities, such as engaging in forthright discussions about the Smithsonian's strategic and operational issues, are in accordance with current board duties of comparable organizations with established practices. While we did not evaluate the effectiveness of governance reforms at comparable organizations, many have highlighted the importance of clearly delineating

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roles and expectations of regents and of holding regents accountable for their individual performance. For instance, American Red Cross emphasized how this process of clarification has helped to create a culture of accountability among its board members, resulting in greater vigilance in their oversight activities. Through our interviews with regents and senior Smithsonian officials, these clarifications appear to have contributed to a greater awareness of the regents' roles and responsibilities in overseeing the institution.

While the initial set of written roles and responsibilities applied to all regents, in practice there have been differing expectations in the level of participation and involvement of citizen, congressional, and ex-officio regents. Previously, citizen regents were expected to chair committees and have historically had greater involvement on committees, and have often participated on multiple committees. Congressional regents have not been expected to chair committees, and some have not served on committees in the past. Furthermore, the Vice President, an ex-officio regent, has not participated in any Board meetings.<sup>21</sup> However, according to the General Counsel, the regents are charged with a sole trust responsibility: to increase and diffuse knowledge among mankind. In discharging that responsibility, all regents are subject to the same fiduciary duties as other trustees: loyalty, prudence, and due care.<sup>22</sup> The IRC recommended that congressional and citizen regents should accept a fiduciary relationship with the institution and devote the requisite time to carry out those duties. The IRC also recommended that the ex-officio regents continue to serve on the Board, but in an advisory role, without fiduciary duties to the institution.

The Board has recently decided to expand the expectations regarding the duties and responsibilities of congressional regents—including expectations for them to serve on at least two committees and serve as

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<sup>21</sup>While the Vice President has not attended any meetings, his regent liaison has attended most Board meetings. Congressional and ex-officio regents each have a regent liaison, who supports them in their service as regents and attends Board meetings and serves as their "eyes and ears."

<sup>22</sup>Fiduciary duty is a duty imposed by law on a person in a position of trust to act for someone else's benefit and not to further one's personal interests. As Board members, this means a duty to use a high level of care to manage the Smithsonian to best promote the institution's interests. GAO, *Legal Services Corporation: Governance and Accountability Practices Need to Be Modernized and Strengthened*, [GAO-07-993](#) (Washington, D.C. :Aug. 15, 2007).

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committee chairs when needed, and equally carry the workload as that of citizen regents. Given their other duties as members of Congress and in order to fulfill their expanded roles and responsibilities, the Board envisions the regent liaisons playing a larger role in assisting the congressional regents in fulfilling their duties. In creating this expanded role for liaisons in the functioning of the Board, it will be important for the Board to clearly delineate what is expected of regent liaisons. The Board has not changed the role or expectations of the Vice President as a member of the Board, but sees value in retaining representation from the executive branch.

Once the Board finalizes the expectations regarding the duties and responsibilities of its regents, a revised set of written roles and responsibilities will be included in the orientation program that is still under development. According to the Chief of Staff to the Board, implementation of the orientation program was not completed in time for the new regent, who began his term in March 2008.<sup>23</sup>

The Board also has clarified the duties of the Chancellor, who by tradition has been the Chief Justice, and created a Chair position to recognize that the Chair of the Board has more leadership responsibilities. Previously, the Smithsonian bylaws established the Chancellor as the Chair of the Board, although the Chair of the Executive Committee in practice performed many duties that would otherwise be expected of the Chair of the Board. The lack of clarity and specificity with regard to leadership on the Board and the limited engagement in Board activities that can reasonably be expected from the Chief Justice were factors that both the Governance Committee and IRC reported were associated with the Board's lack of oversight. To further strengthen leadership, the Board also has recently decided to create a Vice Chair position.

Although it is not yet clear how these changes will affect Board leadership, regents we interviewed expressed the belief that this structure would retain the value they perceived in having the Chief Justice's involvement and also address the limitations on his involvement. The Chair, who was recently elected by the Board, is now expected to play a greater leadership and oversight role in the governance of the Board, including being the chief spokesperson for the Board, working with senior Smithsonian

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<sup>23</sup>On March 14, 2008, John McCarter was officially appointed to be a citizen regent of the Board.

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officials to communicate and oversee implementation of policies adopted and approved by the Board, and leading the Board in its annual evaluation of the Secretary's performance and compensation. The Chancellor's role includes presiding over Board meetings and selected official ceremonies. According to several regents we interviewed, the skill with which the current Chief Justice has led Board meetings was perceived to add tremendous value to the proceedings. According to some governance experts, this structure retains the potential for the magnitude of the Chief Justice's office to suppress and discourage honest and candid deliberation due to the deference individuals may give the Chief Justice, which can hinder Board performance; although according to regents we interviewed, there is no indication that this has occurred.

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### Board Has Taken Steps to Strengthen its Committee Structure, but Issues Regarding the Executive Committee and Use of Nonregents Remain

The Board has taken a number of steps to strengthen its committee structure, such as creating new committees, appointing new committee chairs, and directing all committees to review their charters. Previously, committees were not consistently examining their roles, responsibilities, and jurisdiction, and the June 2007 Governance Committee report raised concerns that some committees were not effectively carrying out their proper oversight functions as a result. Most committees have now completed this review. However, the review of the Executive Committee's charter has not yet been finalized. The IRC's report criticized the Executive Committee for taking certain actions independently of the Board as a whole, such as approving the compensation of the former Secretary, and then seeking approval of the full Board after the fact. While it is not unique for an executive committee to take certain actions or make decisions outside of the full board, experts we spoke with cited concerns when too much authority to make decisions is placed in the hands of just a few board members.<sup>24</sup> Moreover, a January 2008 BoardSource report<sup>25</sup> cited similar concerns and provided several options for reforming the committee, including increasing the size to avoid the risk of delegating decision-making powers to too small a group. Nonetheless, the Board has decided to maintain the current size and scope of responsibilities of the

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<sup>24</sup>The Smithsonian's Executive Committee consists of only three members—one of whom was formerly the Chancellor, an ex-officio, who chose not to exercise his voting powers. Recently, the Chancellor removed himself from the Board's Executive Committee and a citizen regent was added to the Committee.

<sup>25</sup>In January 26, 2008, BoardSource issued a report that was commissioned by the Governance and Nominating Committee to examine the composition and structure of the Board.

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Executive Committee, but may recommend reconsideration at another time.<sup>26</sup> The Board also has decided that the newly created Vice Chair of the Board will be a member of the committee, and the Board has made it a responsibility of the Governance and Nominating Committee to closely monitor the activities of the Executive Committee. It remains to be seen whether these steps will be sufficient to ensure that the Executive Committee does not begin to act in lieu of the full Board when it should and could be engaged.

At the onset of its governance reform effort, the Board created new standing committees on governance and facilities that previously did not exist; however, the Board noted in the Governance Committee's report that significant areas of Smithsonian activities were not within the oversight of any of the Board's committees, including fundraising and development, most programmatic activities, and strategic planning.<sup>27</sup> The BoardSource report also noted the need and potential for adding additional committees, and suggested enhancing the current committee structure by creating a committee on resource development to demonstrate the Board's commitment to obtaining appropriate resources beyond federal allocations.<sup>28</sup> The report also suggested establishing a strategic planning committee to lead the Smithsonian through the strategic planning process that would identify programmatic and fundraising goals. In addition, the report from the SBV task force that was issued in January 2008 also recommended creating a committee or subcommittee to focus on increased oversight of SBV programs.

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<sup>26</sup>According to the Chief of Staff to the Board, the Executive Committee also will meet periodically with the Chancellor of the Board.

<sup>27</sup>For example, the Board was previously involved to varying degrees in budgetary and planning events, including annually dedicating one of its meetings to strategic planning issues and formally approving the Secretary's organizational goals. However, the Board has not participated directly in developing, reviewing, or formally approving the Smithsonian's strategic plan. The Board tasked the Finance and Investment Committee to review the Smithsonian federal and trust budget formulation process to identify key budgetary events and strategic planning activities that would benefit from or require the Board's direct involvement in the process. This review was completed and its recommendations to expand the role of the Board in the budget and strategic planning process were approved at the May 5, 2008, Board meeting.

<sup>28</sup>The BoardSource report also suggested creating an ad hoc campaign committee as an alternative to supporting the Board on its major capital campaign.

As a result of these reports, the Board has decided to create new committees on strategic planning and programs, and advancement.<sup>29</sup> Since these committees have just been created, it remains to be seen how they will improve the Board’s engagement in the Smithsonian’s strategic planning and budget formulation processes and change its role in raising funds for advancement and development.

The Board has addressed issues regarding the need for additional expertise by increasing the use of nonregents<sup>30</sup> on committees, though some issues are still under consideration regarding the appropriate selection and use of nonregents. The IRC’s report noted concern that the Board may have needed expertise in some areas—such as financial or accounting expertise—and that this contributed to the lack of oversight of executive compensation and expenses. According to some governance experts and the BoardSource report, bringing in nonregents with specific expertise to be part of Board committees can be effective in providing an independent and different perspective and in “doing the work” of the committee. Comparable organizations also recruit nonboard committee members to provide advice and different perspectives. For instance, officials from the United Way of America stated that half of its board’s committees have nonboard members in addition to board members. Table 2 shows the increase in the use of nonregents on the Board of Regents’ committees as well as the relative workload changes for citizen and congressional regents.

**Table 2: Comparison of the Board of Regents’ Standing Committee Membership in January 2007 and May 2008**

| Board Standing Committees        | Committee Membership (January 2007)                                                                  | Committee Membership (May 2008)                                                                       |
|----------------------------------|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Advancement <sup>a</sup>         | Did not exist                                                                                        | <ul style="list-style-type: none"><li>• 3 citizen regents</li><li>• 1 nonregent</li></ul>             |
| Audit and Review                 | <ul style="list-style-type: none"><li>• 4 citizen regents</li></ul>                                  | <ul style="list-style-type: none"><li>• 3 citizen regents</li><li>• 1 congressional regent</li></ul>  |
| Compensation and Human Resources | <ul style="list-style-type: none"><li>• 4 citizen regents</li><li>• 1 congressional regent</li></ul> | <ul style="list-style-type: none"><li>• 3 citizen regents</li><li>• 2 congressional regents</li></ul> |

<sup>29</sup>The Board also created a separate Investment Committee, which was previously a subcommittee of the Finance and Investment Committee.

<sup>30</sup>Nonregents are individuals who are members of and contribute to the work of Board committees, but are not members of the Smithsonian Board of Regents.

| <b>Board Standing Committees</b>                       | <b>Committee Membership (January 2007)</b>                                                                                       | <b>Committee Membership (May 2008)</b>                                                                                          |
|--------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| Executive                                              | <ul style="list-style-type: none"> <li>• 1 ex-officio regent</li> <li>• 2 citizen regents</li> </ul>                             | <ul style="list-style-type: none"> <li>• 3 citizen regents</li> </ul>                                                           |
| Facilities Revitalization <sup>b</sup>                 | <ul style="list-style-type: none"> <li>• 3 citizen regents</li> <li>• 4 congressional regents</li> </ul>                         | <ul style="list-style-type: none"> <li>• 1 citizen regent</li> <li>• 3 congressional regents</li> </ul>                         |
| Finance and Investment (now just Finance) <sup>a</sup> | <ul style="list-style-type: none"> <li>• 2 citizen regents</li> <li>• 2 congressional regents</li> <li>• 2 nonregents</li> </ul> | <ul style="list-style-type: none"> <li>• 2 citizen regents</li> <li>• 1 congressional regent</li> <li>• 1 nonregent</li> </ul>  |
| Governance and Nominating <sup>c</sup>                 | Did not exist                                                                                                                    | <ul style="list-style-type: none"> <li>• 3 citizen regents</li> <li>• 2 congressional regents</li> <li>• 1 nonregent</li> </ul> |
| Investment <sup>d</sup>                                | Previously a subcommittee of Finance and Investment                                                                              | <ul style="list-style-type: none"> <li>• 2 citizen regents</li> <li>• 3 nonregents</li> </ul>                                   |
| Nominating <sup>e</sup>                                | <ul style="list-style-type: none"> <li>• 4 citizen regents</li> <li>• 1 congressional regent</li> </ul>                          | Merged with Governance Committee                                                                                                |
| Strategic Planning and Programs <sup>a</sup>           | Did not exist                                                                                                                    | <ul style="list-style-type: none"> <li>• 2 citizen regents</li> <li>• 3 congressional regents</li> </ul>                        |

Source: GAO analysis of Smithsonian data.

Note: As of May 5, 2008, the Chair of the Board of Regents is an ex-officio member of all committees except those on which he serves as a full committee member or chair.

<sup>a</sup>At the May 5, 2008, Board meeting, the Board approved creation of two new committees: Advancement, and Strategic Planning and Programs.

<sup>b</sup>Facilities Revitalization Committee was an ad hoc committee prior to June 2007.

<sup>c</sup>Board established Governance Committee as standing committee in March 2007 and then combined committee function with Nominating Committee in June 2007.

<sup>d</sup>As of the May 5, 2008, Board meeting, the Finance and Investment Committee was split into two committees—a Finance Committee and an Investment Committee.

<sup>e</sup>Board combined Nominating Committee with Governance Committee to create Governance and Nominating Committee in June 2007.

While using nonregents permits the Board to increase its knowledge base without changing its size or structure, no formal process exists for the identification and selection of nonregents, and certain policies regarding the appropriate role of nonregents are still under development. Nonregents are currently recruited and vetted through informal channels. For example, regents may reach out within their particular field or professional network for recommendations or referrals for experts in a particular discipline. The full Board then approves the appointment of nonregents. According to the Chief of Staff to the Board, the Governance and Nominating Committee is considering policies and processes regarding the use of nonregents. For example, one option under consideration is to look to first recruit nonregent expertise from the

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advisory boards within the Smithsonian before looking outside the institution. In addition, the Governance and Nominating Committee is still considering whether and how nonregents should take on leadership roles in the committees.

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## Board Does Not Plan to Make Major Structural Changes to Its Composition

The Board has decided that no major structural changes should be made to the Board's composition. Many have suggested that the Board's composition contributed to governance breakdowns because of concerns about a lack of engagement of some regents and concerns of whether the Board is large enough to house the diversity of skills and expertise needed to effectively carry out its oversight activities. The BoardSource report reinforced these concerns and found that the statutorily required structure and composition of the Board can, in fact, create limitations for the Board with regard to evenly spreading its workload, and adding a diversity of skills and expertise. Furthermore, the Board has no authority in recruiting and appointing congressional and ex-officio regents, which can limit its ability to add needed expertise within its current structure. Our analysis of the criteria developed for citizen regents finds that the criteria are consistent with current accepted practices, and include such things as whether individuals can serve in leadership roles, whether they have well-rounded experience in multiple fields, and whether they have specific expertise needed on the Board and are appropriate for the Smithsonian's specific needs. However, in selecting congressional regents, it is unclear whether the President Pro Tempore of the Senate and the Speaker of the House—who appoint congressional members—consider such criteria when selecting congressional regents.

The BoardSource report suggested four options for the Board to consider that included making no major structural changes to the Board and a range of increases in the size of the Board either through adding more citizen regents, decreasing the number of congressional regents, or both. The report noted that any changes to the Board's composition regarding its size or representation would require legislative action. All four options would maintain representation from all three branches of government, and thus retain different expectations for citizen, congressional, and ex-officio regents.

Literature we reviewed and governance experts we spoke with indicated that it is not necessarily the particular size or structure of the board, but rather a board's high level of engagement and participation, and a broad diversity of skills and expertise that seem to drive effective governance. Experts we spoke with pointed to examples of successful boards of many

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sizes and structures. In theory, boards with ex-officio and other governmental members can still be effective, but their effectiveness depends on having clear and specific expectations of the level of commitment and contribution board members can realistically make. Moreover, some experts we interviewed held the view that major structural changes may not be the most effective approach when considering governance reform, and that there is some evidence—though not conclusive—that reforms aimed at changing the “culture” of a board to be more participatory and accountable are ultimately more effective at improving governance. The J. Paul Getty Trust, which, according to officials, faced many of the same issues regarding inadequate oversight of executive compensation and expenses, did not make significant structural changes to its board, but rather focused on instilling a culture of accountability. Although we did not assess the effectiveness of their reforms, officials involved with the board indicated that these changes resulted in major improvements from their perspective with regard to their board’s engagement and accountability.

According to the Chief of Staff to the Board, the Board expects that further clarification of duties and expectations of all regents—such as increasing the participation level of congressional regents in committees and distributing the workload equally among the citizen and congressional regents—and increased use of nonregents to address the need for diverse expertise and skills in committees will adequately address the major governance issues regarding size and structure facing the Board. Furthermore, as previously mentioned in this report, staff liaisons for congressional regents—who, according to the BoardSource report and to regents we interviewed, have been viewed as an important conduit for the congressional regents to keep them abreast of the activities of the Board—also are envisioned to play a greater role in assisting congressional members in taking on more responsibilities. However, these changes have just been instituted, and thus it remains to be seen whether the Board’s actions will be sufficient to ensure that all regents are fully engaged and held accountable for fulfilling their roles and expectations.

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## Performance Assessment Process Needed to Ensure Accountability of Board Members and Committees Is Under Development

The Board is in the process of developing a self-assessment process to examine its performance, which is not expected to be finalized and implemented until June 2008. Previously, the Board lacked a formal and regular assessment of its performance to determine its effectiveness in governance and oversight of Smithsonian management.<sup>31</sup> Our review of standards of practice for nonprofit boards indicates that implementing a regular and consistent self-assessment process is critical to improving individual performance and contribution to a governing board. If a board does not assess its performance, it is missing a key opportunity for input from its own members for improving its operations and governance policies. A self-assessment of the board, committees, and individual members enables a board to identify areas for improvement in the board's operating procedures, its committee structure, and its governance practices.

The Board has drafted a self-assessment questionnaire to facilitate the evaluation process and help the Board understand what it does well and what needs to improve. However, the draft questionnaire does not fully address evaluation of performance against the full range of regent expectations, such as the Board's role in the Smithsonian's strategic planning process. The self-assessment process will need to be further developed to reflect changes to expectations for congressional regents and their liaisons. According to the Chief of Staff to the Board, the Board is currently considering changes to the draft assessment tool to reflect these concerns.

Other organizations go beyond self-assessments and can remove board members whose performance is inadequate or not up to expectations. For instance, American University told us that its Board of Trustees conducts an individual and peer assessment every 3 years (board members have 3-year terms), at the conclusion of a member's term, before reappointment. Board members whose terms are up for renewal complete a self-assessment form, and their colleagues on the board also assess the board members' performance, using a different assessment form. If a board member has not performed up to expectations, he or she will not be nominated for re-election. A similar practice was instituted at the United Way of America in its governance reform, where officials told us there

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<sup>31</sup>Two Board committees—the Audit and Review and Finance and Investment Committees—conducted performance assessments in the past. However, the results of those assessments were not reported to the full Board.

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have been cases where a board member was removed because the member was not attending meetings and fulfilling board duties and obligations. In other organizations, boards retain the authority to remove board members for cause. For example, the board of the Legal Services Corporation, which is a federally chartered nonprofit organization consisting of 11 bipartisan board members, has the authority to remove its members for cause, such as persistent neglect of duties, by a vote of at least 7 members. While board members are appointed by the President with the advice and consent of the Senate, neither the President nor the Senate has the power to remove the Legal Services Corporation board members.

Although the Smithsonian Governance and Nominating Committee can examine and determine the level of interest of a regent in continuing his or her service and weigh the interest of other regents before calling on a vote for the regent's renomination, the Board has no authority to remove regents for cause, such as persistent neglect of duties during a regent's term. The Smithsonian's General Counsel told us that the Board itself cannot remove regents—only Congress can take action to remove a regent. In our interviews with Smithsonian officials, it is unclear what actions the Board could or would take in the event of persistent neglect of duties by any of its regents. Removal of a regent has occurred at least once in the history of the Smithsonian, but not in recent memory. It remains to be seen how the Board will proceed with its self-assessment process, and a key challenge for the Board will be how to hold all regents accountable for individual performance. Moreover, no mechanism is planned to evaluate the implementation and effectiveness of the governance reforms after enough time has passed for the Smithsonian to operate in a fully reformed environment.

Literature we reviewed indicated that while self assessments are valuable and important, they are limited to the views of those being surveyed, and a governing board should occasionally solicit the viewpoints of stakeholders and others close to the governance process to continuously search for ways to improve. Another approach to performance assessment is bringing in outside consultants to interview board members and present results. Current practices include appointing an independent task force or commission to interview board officers and others in an institution every few years concerning the board's strengths and weaknesses, and what the board could do to empower staff and advisory boards to fulfill their responsibilities more effectively. One governance expert we interviewed commented that boards undergoing governance reform should undertake a thorough, independent, postgovernance reform review to evaluate the

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effectiveness of governance changes. Although most of the organizations we spoke with that have recently undergone governance reform have not yet performed a comprehensive, postgovernance reform assessment, American University officials told us that the university is planning to conduct a review of its governance reform in a 5-year period to assess whether its governance practices and structure are effective. Given the extent and pace of changes occurring at the Smithsonian, as well as other transformations of the institution, including the hiring of a new Secretary and significant reforms to SBV, among other things, it is likely that many governance reforms will not be completely implemented for some time, and the effectiveness of some reforms will only be evident over a longer period of implementation.

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## Conclusions

The Smithsonian Institution relies significantly on funding from taxpayers and donors, and as such, effective governance and accountability are key to maintaining trust and credibility. Governance and accountability breakdowns can result in a lack of trust from donors, grantors, and appropriators, which could ultimately put funding and the organization's credibility at risk. The Smithsonian's Board of Regents has taken many steps to implement governance reforms since June 2007 to address several of the problems that led to the incidents that caused concern about governance and accountability. The Board has reformed executive compensation and benefits, initiated reviews of the Smithsonian's policies and internal controls, enhanced the access of key stakeholders to the Board, increased transparency, and clarified the roles and responsibilities of regents.

We acknowledge and recognize the efforts that have been made by the Board and Smithsonian staff in confronting these governance issues. However, we also note that there are some areas where reforms have yet to be developed, or where improvements to the transparency and accountability mechanisms of the Board could be taken further. For example, reforms related to enhancing the Board's relationships with important stakeholders, including museum advisory boards and the public, remain under consideration, and current efforts have yet to fully develop mechanisms by which the Board can receive and consider unfiltered, needed information from these stakeholders on a regular basis. Without such mechanisms, these efforts may not have the desired impact of creating an environment for governance that is inclusive of the broad diversity of activities and viewpoints of stakeholders within and outside of the Smithsonian. Furthermore, while the Board is still considering how it can best recruit and use nonregent experts—potentially using advisory

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board members—there is currently little transparency as to how nonregent experts on committees are to be selected, used, or evaluated. Moreover, while the Board has made strides in defining and refining the roles and responsibilities of regents, it remains unclear what actions the Board can take to hold its regents and their liaisons accountable in the event that they do not fulfill their roles and expectations. Finally, while the Board and the Smithsonian as a whole are currently focused on extensive governance reforms, and the Board is tracking the implementation of these reforms through a scorecard that is posted on the Smithsonian's Web site and updated monthly, no mechanism is planned to evaluate the implementation and effectiveness of these reforms after enough time has passed for the Smithsonian to operate in a fully reformed environment. Over the long term, focusing on regular and continuous improvements in these areas could help to enhance the credibility of and the public's trust in the Board, as well as its current governance reform efforts.

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## Recommendations for Executive Action

We are making the following four recommendations to the Board of Regents to strengthen its governance reform efforts:

- In implementing the Governance Committee's recommendations related to stakeholder relationships, the Board of Regents should develop a regularly occurring mechanism that ensures an understanding of and meaningful consideration by the Board of the key concerns of advisory boards and other stakeholders, and a formal means by which the Board follows up on those concerns.
- To provide more transparency into the use of nonregents, the Board should clarify and make public the process used to select nonregents for service on its committees, the roles and expectations for nonregents, and how nonregents' performance will be evaluated.
- To improve the accountability of regents in fulfilling their newly clarified roles and responsibilities, the Board should evaluate what actions it can take in the event of persistent neglect of duties by any regents or their liaisons.
- To ensure that the multiple governance and management reform efforts underway are effective in addressing the issues that led to governance and accountability breakdowns, and also to ensure that the Board is focused on continuous improvement of the governance and management practices at the Smithsonian, the Board should plan to have an evaluation of its comprehensive governance reform efforts conducted after a suitable period of operation in the reformed environment.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Smithsonian Board of Regents and the Smithsonian Institution for their official review and comment. Both the Board and the Smithsonian concurred with all our recommendations. In addition, they provided technical clarifications to the draft which we incorporated into the final report, where appropriate.

Regarding our recommendations, both the Board and the Smithsonian stressed the importance of enhancing relationships with stakeholders and agreed that these relationships and related communication can be improved. The Board and the Smithsonian underscored that they are working together to enhance these relationships and communication—particularly with advisory boards. In addition, the Smithsonian provided examples of recent efforts to enhance communication with stakeholders. Although all recommendations are directed at the Board, the Smithsonian noted its role in helping the Board implement the recommendations related to improving stakeholder relationships and ensuring that sound governance is a priority in Smithsonian operations. The Board highlighted the importance of making the selection process for nonregents transparent and holding all regents accountable for their performance. The Board's comments to our report can be found in appendix III and the Smithsonian's comments to our report can be found in appendix IV.

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We are sending copies of this report to the appropriate congressional committee. We are also sending this report to the Chair of the Smithsonian Institution's Board of Regents and the Acting Secretary of the Smithsonian Institution. We will make copies available upon request. In addition, this report will be available at no cost on the GAO Web site at <http://www.gao.gov>. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

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If you or your staff have any questions about this report, you may contact me at (202) 512-2834 or at [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov). Major contributors to this report are listed in appendix V.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Goldstein', with a long horizontal flourish extending to the right.

Mark L. Goldstein  
Director, Physical Infrastructure Issues

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# Appendix I: Scope and Methodology

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To determine the extent to which the Smithsonian Institution's Board of Regents' (Board) actions have addressed issues related to executive compensation, travel, and internal control and other policies, we interviewed senior Smithsonian Institution (Smithsonian) management officials and regents and reviewed Smithsonian and other documents. Specifically, we met with regents, the Acting Secretary, the Chief Financial Officer, Director of Government Relations, Chief of Staff to the Board of Regents, Director of Human Resources, and other senior officials and staff to obtain the implementation status of the recommendations relating to these areas. We also reviewed Smithsonian and other supporting documents, including the report from the Smithsonian Business Ventures Task (SBV) Force, the PricewaterhouseCoopers unified executive compensation study, and the Mercer Human Resource Consulting executive compensation study that was used in the search process for the new Secretary. We reviewed the Smithsonian worksheets used to create leave balances for all executives transitioning to a leave policy and National Finance Center records to validate that all these executives are now recording leave. We reviewed internal Smithsonian documents describing ongoing efforts related to reviewing travel and event expenses, contracting policies, SBV's policies, and its internal control review, and we reviewed Smithsonian directives relevant to each of these areas. We met with the Inspector General to discuss ongoing efforts of this office to review the travel expenses of Smithsonian executives and reviewed Inspector General reports in this area. Furthermore, we also reviewed GAO's prior work on these issues, including travel expenses, contracting, and internal controls, and we reviewed the policies of the comparable organizations described below in relation to these activities.

To determine whether the Board has addressed issues related to improving information available to the Board, and transparency and communication concerning the Board and Smithsonian operations, we reviewed Smithsonian laws, policy directives, and other documentation. We interviewed senior Smithsonian management officials, including three undersecretaries or acting undersecretaries, directors of all Smithsonian's museums, including the Director of the National Zoological Park, and one research center director, to discuss issues related to their understanding of Board functions and their level of communication with the Board. To assess how the Board has improved transparency, we reviewed the Board's Web page and policies and procedures related to providing information to the public, including its Freedom of Information Act policy, and compared it to the Act. We interviewed key Smithsonian officials, including the Chief of Staff to the Board of Regents, Acting Secretary, the Director of External Affairs, and the Director of Communications and

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Public Affairs to learn the status of the Board's plans to improve transparency. We also met with the General Counsel, the Chief Financial Officer, and the Inspector General to assess the level of communication and access between the Board and key Smithsonian officials, before and after governance changes. We reviewed the Board's meeting minutes and supporting documents, including revised bylaws and position descriptions to determine the extent to which information regarding the Board's decisions was made available to the public. We met with chairs of selected advisory boards to obtain their perspective of the Board's interaction and communication with them. We interviewed 10 science, arts, history and culture, and research-oriented advisory boards to obtain a nongeneralizable representation. To assess the Board's efforts at improving communication with other stakeholders, we reviewed GAO's work on federal agency communication strategies.

To determine the extent to which the Board has addressed issues related to roles and responsibilities, size and structure, and performance of the Board, we reviewed Smithsonian and other documents to assess current board practices and the Board's progress towards implementing governance reform efforts. To examine the roles and responsibilities of the Board, we looked at relevant laws pertaining to the creation and operation of the Smithsonian Board of Regents and reviewed Smithsonian documents, including Board bylaws and written set of the Board's and its committees' duties and responsibilities. To assess the size, composition, and structure of the Board, we reviewed a recent BoardSource report that was commissioned by the Board to examine possible options for the Board's size and structure. To assess the extent the Board has addressed issues related to its performance assessment, we examined relevant Smithsonian documents, including a draft board assessment instrument, compiled current governance practices from several sources, and interviewed key Smithsonian officials. We interviewed all of the current citizen regents, except the most recently appointed regent, three former citizen regents, and four congressional regents and the primary staff liaisons to the remaining two congressional regents. We also obtained a written response from the Chief Justice to questions we provided. We interviewed senior Smithsonian officials, including the Chief of Staff to the Board of Regents and General Counsel to obtain their perspective and information on the status of the governance reform efforts. To identify current nonprofit governance practices, we reviewed literature on corporate and nonprofit governance, including literature from organizations such as the American Association of Museums, BoardSource, Council on Foundations, Independent Sector, the Museum Trustee Association, and The Conference Board. We also reviewed GAO's

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work on governance of several organizations, including the John F. Kennedy Center for the Performing Arts, Legal Services Corporation, and Federal Deposit Insurance Corporation. We identified and interviewed governance experts on nonprofit governance, including academics, to obtain independent views on the Smithsonian's governance problems and whether recent governance changes will address those problems. The governance experts we interviewed included four governance or museum experts who advised the Smithsonian during its governance review, as well as six that we identified through a literature search or were referred to us by other experts in the field.

To perform all of our work on all of the above objectives, we also met with officials from several institutions that had some similarity to the Smithsonian and that had recently undergone governance reforms. We focused on organizations that had had similar governance problems, conducted a governance review, and changed their practices or structure; organizations that had a structure that consisted of a central or national governing body with multiple programming units; and organizations with similar missions and stewardship challenges. We met with officials from American University, American National Red Cross, J. Paul Getty Trust, and United Way of America, who had in-depth knowledge and contributed to governance reform efforts at the respective organizations. We also met with officials from the National Trust for Historic Preservation, an organization that, according to officials, initiated governance reform without having experienced similar governance challenges. We reviewed recently enacted legislation relating to governance for one of the organizations. While we did not evaluate the effectiveness of the governance reforms efforts at these comparable organizations, we reviewed and analyzed documents from these organizations relevant to their governance reform efforts.

We conducted this performance audit from May 2007 to May 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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# Appendix II: GAO's Assessment of Governance Committee's Report Recommendations (as of May 2008)

| Governance Committee recommendation                                                   | GAO assessment of implementation |
|---------------------------------------------------------------------------------------|----------------------------------|
| 1. Examine Board structure                                                            | ✓                                |
| 2. Adopt description of duties and responsibilities of all regents                    | ✓                                |
| 3. a) Adopt description of duties and responsibilities of Chair and Chancellor        | ✓                                |
| b) Provide for election of new Chair                                                  | ✓                                |
| 4. a) Schedule at least four business meetings annually                               | ✓                                |
| b) Revise how minutes are taken                                                       | ✓                                |
| c) Secretary to delegate corporate secretarial duties to General Counsel              | ✓                                |
| 5. a) Develop Board orientation process                                               | ☑☑☐                              |
| b) Develop regents' assessment process                                                | ☑☑☐                              |
| c) Establish independent regent staff                                                 | ✓                                |
| 6. a) Each committee to review and revise charters                                    | ☑☑☐                              |
| b) New leadership appointed for each committee                                        | ✓                                |
| 7. a) Refine the executive compensation process to follow best practices <sup>a</sup> | ✓                                |
| b) Follow process to recommend range for Secretary's compensation package             | ✓                                |
| 8. Create standing committee on Facilities Revitalization                             | ✓                                |
| 9. a) Create criteria for new citizen regents                                         | ✓                                |
| b) Review existing appointment procedures to committees                               | ☑☑☐                              |
| 10.a) General Counsel to have direct access to Board                                  | ✓                                |
| b) Board review sufficiency of General Counsel resources                              | ✓                                |
| 11.a) Chief Financial Officer to have direct access to Board                          | ✓                                |
| b) Board review sufficiency of Chief Financial Officer resources                      | ✓                                |

**Appendix II: GAO's Assessment of  
Governance Committee's Report  
Recommendations (as of May 2008)**

| Governance Committee recommendation                                                          | GAO assessment of implementation |
|----------------------------------------------------------------------------------------------|----------------------------------|
| 12. a) Inspector General to have direct access to Board                                      | ✓                                |
| b) Board review sufficiency of Inspector General resources                                   | ✓                                |
| c) Inspector General to relocate to downtown Washington                                      | ✓                                |
| 13. Enhance role of advisory boards                                                          | 🔍                                |
| 14. a) Develop overarching Smithsonian code of ethics                                        | ✓                                |
| b) Establish ethics hotline                                                                  | ✓                                |
| 15. a) Create regent annual public forum                                                     | ☑☑☐                              |
| b) Launch regents' public Web page                                                           | ✓                                |
| 16. Develop strategy to increase stakeholder access to Smithsonian information               | ✓                                |
| 17. Develop Freedom of Information Act policy                                                | ✓                                |
| 18. Develop policy prohibiting senior staff service on for-profit boards                     | ✓                                |
| 19. a) Create leave accrual system for senior trust employees                                | ✓                                |
| b) Develop database to identify potential conflicts of interest                              | Delayed                          |
| 20. Require Smithsonian Business Ventures to follow Smithsonian policies                     | ☑☑☐                              |
| 21. a) Adopt interim policies on travel and event expenses                                   | ✓                                |
| b) Develop expense policies for regent events                                                | ☑☑☐                              |
| c) Review internal controls of travel and expense reimbursement                              | ☑☑☐                              |
| 22. Develop opportunities to provide strategic direction in development of budget priorities | ✓                                |
| 23. Conduct comprehensive review of financial reporting and internal controls                | ☑☑☐                              |
| 24. Develop unified compensation policy                                                      | ✓                                |
| 25. Develop contracting policy                                                               | ☑☑☐                              |



Completed (the recommendation has been implemented)



Under study (implementation of the recommendation is under further study)



Steps taken (steps have been taken to implement the recommendation, but more work is needed)

Source: GAO presentation and analysis of Smithsonian data.

"We confirmed that the executive compensation process that was followed to set the salary range for the next Secretary's compensation package was refined to address many of the IRC's concerns about the previous compensation process, but we did not validate the extent to which this process follows best practices.

# Appendix III: Comments from the Smithsonian Institution Board of Regents



Smithsonian Institution

The Board of Regents

Chancellor  
The Chief Justice of  
the United States

May 7, 2008

Chair  
Roger W. Sant,  
Washington, D.C.

Mark L. Goldstein  
Director, Physical Infrastructure Issues  
Government Accountability Office

Members  
The Vice President of  
the United States

441 G Street, NW  
Washington, DC 20548

The Honorable  
Thad Cochran,  
Mississippi

Dear Mr. Goldstein:

The Honorable  
Christopher J. Dodd,  
Connecticut

On behalf of the Board of Regents of the Smithsonian Institution, I would like to express our sincere gratitude to you and the staff of the Government Accountability Office (GAO) for this comprehensive review of our governance reform effort. The past year has been tumultuous for the Smithsonian and we appreciate the fair, balanced, and productive approach of the report. The Regents have been advised of your findings and recommendations and, as Chair and on behalf of the Board, I can represent that we embrace the recommendations. As I discuss in more detail below, we are confident that these recommendations complement our efforts to become a more effective governing board and a leader in 21<sup>st</sup> Century nonprofit governance.

The Honorable  
Patrick J. Leahy,  
Vermont

The Honorable  
Xavier Becerra,  
California

I address each recommendation separately below to underscore our understanding and note many of the efforts already underway to implement them.

The Honorable  
Sam Johnson,  
Texas

The Honorable  
Doris Matsui,  
California

## Ensuring an understanding of key stakeholder concerns, including the advisory boards

Eli Broad,  
California

We strongly agree that our efforts must now focus on improving the relationship between the Board of Regents and our many stakeholders, in particular the more than 600 dedicated members of the advisory boards. The Acting Secretary, in his response, described the efforts to improve communications with the Congress, Smithsonian staff and volunteers, and the public. The Board supports those efforts and is partnering with senior management to facilitate communications with, and to disseminate information about, the Regents.

Phillip Frost,  
Florida

Shirley Ann Jackson,  
New York

Robert P. Kogod,  
Washington, D.C.

John W. McCarter, Jr.,  
Illinois

Over the next few months, we will focus on establishing mechanisms to improve our communications and partnership with the advisory boards. In my conversations with the chairs of these boards, and as I reported to the Regents at our May 5 meeting, Smithsonian advisory boards are an underutilized asset. Most of the boards work closely with their museum directors and staff and understand best the pressing issues facing their

Alan G. Spoon,  
Massachusetts

Patricia Q. Stonesifer,  
Washington

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Washington DC 20560-0040

museums and programs. Effective oversight of a diverse and complex organization such as the Smithsonian must reflect the perspective and expertise of these groups.

At our September 2008 board meeting, we expect the Governance and Nominating Committee to bring to the full Board a series of recommendations to strengthen this critical partnership. In the meantime, we will continue our outreach. Beginning immediately, staff reporting directly to the Regents will attend the meetings of advisory board, allowing the Regents to better understand the business of each group and to create a formal vehicle for direct communication to the Regents and to help to ensure that issues raised by the boards to the Regents are appropriately addressed.

#### **Clarifying the process to select, and the roles of, non-Regents on committees**

The Regents believe that the aggressive, but prudent, supplementation of the Board with non-Regent members on committees will broaden our capacity and expertise. We recognize that non-Regent members can greatly enhance the work of the committees by providing specific expertise in areas. However, to be productive, we believe that non-Regent members should also possess significant ties to the Institution beyond their committee assignment. Again, we believe that greater involvement from the advisory board leaders will help address this issue. The 600 members boast a wide variety of relevant expertise and skills and have already demonstrated a strong commitment to the Institution.

This reliance, however, is founded in our commitment to consider non-Regent members as full and equal colleagues. All committee members --- Regents and non-Regents---have the same roles and responsibilities. Assessment of a committee member's performance will not distinguish expectations based on status. We agree with your recommendation that the process to select non-Regent committee members should be transparent and clear and we will consult with the advisory boards and other stakeholders on effective ways to identify qualified candidates.

In this regard, I am very pleased to note that at the Board's May 5 meeting, we created a standing Investments Committee, chaired by a non-Regent and with a majority of non-Regent members. This step not only acknowledges the importance placed by the Board on managing the endowment, but also the role non-Regents will begin playing in governing the Smithsonian, and the trust we have placed in them. Indeed, Diana Aviv, President and Chief Executive Officer of Independent Sector, and a non-Regent member of the Governance and Nominating Committee, played a key role in the development and implementation of our reform agenda.

#### **Evaluate potential actions to address non-performance by Board members**

The Regents share a strong expectation that all members will be equally engaged and active. As part of our governance reforms, we clearly set forth the duties and expectations

of each Regent. Service as a Regent is a great honor, but with that honor comes significant responsibilities. Accepting membership now requires a promise by each Regent to be active, engaged, and productive. We are committed to working together, equally sharing our oversight and governing duties. All Congressional and Citizen Regents are expected to serve on at least two committees and each of us pledged to do so without hesitation.

We strongly believe that by clearly articulating Regents' roles and responsibilities accompanied by an informed and explicit acceptance by each member will help ensure a committed Board. We are also implementing an annual assessment process that will help identify weaknesses in the performance of individual members or the Board as a whole. We anticipate that these critical improvements –concrete commitments and expectations and routine evaluations – will ensure the productivity of all members of the Board. However, we agree that the Board, in consultation with the Congress, should identify potential remedies to cure persistent neglect of duties by a Regent.

**Evaluate the efficacy of the Board's governance reform efforts**

Over the past year, we have learned that good governance evolves and that complacency is a symptom of a disengaged board. We fully agree with your conclusion that the Board must focus on the continuous improvement of the Smithsonian's governance and management practices by reviewing the efficacy of our reforms after a suitable period of time. At our May 5 meeting, the Board committed itself, through the Governance and Nominating Committee, to a review of our governance practices every three years. We also recognize that the foundation for long-term governance is not complete. As noted above, we must still strengthen the partnership between the Regents and the advisory boards and challenges remain in establishing robust financial and internal controls.

Over the past year, we believe that the Smithsonian has become a leader in non-profit governance. The process was not easy, the problems we found were challenging, and many choices made were painful. In the end, we believe that the Board, the Institution, and those who share our passion for what the Smithsonian does, are better for it.

Sincerely,



Roger W. Sant

# Appendix IV: Comments from the Smithsonian Institution



## Smithsonian Institution

Cristián Samper  
Acting Secretary

May 6, 2008

Mr. Mark L. Goldstein  
Director, Physical Infrastructure Issues  
Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Goldstein:

On behalf of the senior management of the Smithsonian Institution, I want to thank the Government Accountability Office (GAO) for its thorough and thoughtful review of governance reform at the Smithsonian. Over the last year, GAO staff members have devoted considerable time and energy to understanding the complex nature of the Smithsonian, the challenges it faces, and the improvements we have made. We appreciate the fair and detailed inquiry you have conducted and are pleased to join the Board of Regents in accepting the recommendations made by this report. While all four of the report's recommendations are directed to the Board, the senior leadership of the Smithsonian will play a role in the implementation of two of those directives, specifically by improving communications with stakeholders and by ensuring that sound governance remains a priority in our operations.

### Communications

One area of the report on which we would like to add more detail is the great progress we have made in improving communication with our internal and external stakeholders during the past year. We have greatly increased the frequency and depth of information that is shared with staff, Congress, advisory board members and the public. More importantly, we have created more opportunities to listen to our stakeholders and have actively solicited their input on important issues. We have also collaborated with the members of the Board of Regents to increase their visibility and accessibility by the staff, members of the press, and the public. We work together to ensure coordination of announcements, preparations for public meetings, and dissemination of important information to staff and key stakeholders, such as Congress. The implementation of our new communications strategic plan in the coming months will build upon and enhance these improvements even further.

One of my proudest accomplishments in the year I have spent as Acting Secretary is having laid the foundation for an open dialogue between the senior management and the entire Smithsonian staff. Internal communication will take on added importance in the

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202.786.2515 Fax

Mr. Mark L. Goldstein  
May 6, 2008

next few years as the Smithsonian embarks on an active new chapter by welcoming a new Secretary, initiating an Institution-wide strategic plan, and launching a national fundraising campaign. Through Smithsonian-wide email communications, articles in staff publications, all-staff meetings, and webcasts we have updated employees more regularly on major decisions and events with Institution-wide impact. More frequent and more candid meetings with directors and managers have also improved the flow of information between the senior leadership and the units they serve. To ensure the dialogue with staff continues and evolves as needed, we have named a new Director of Internal Communications who will be dedicated to this important effort.

We have also improved the type and quantity of information that we make available to Congress and the public. Through additional meetings and communications with our Congressional committees and their staffs and more frequent consultations on key issues, we hope that Congress has the thorough and timely information it needs to make funding decisions and exercise its oversight role. The policy that governs how the Institution responds to requests for information is now contained in a new directive and we have enhanced the contents of our website to offer timely and relevant information. We work with the Office of the Regents to ensure materials are posted quickly and are comprehensive enough to meet public expectations of transparency.

Another significant priority is engaging and communicating with the hundreds of devoted volunteers who give of their time and expertise by serving on one of the Smithsonian's advisory boards. Although the relationships between these boards and the individual museums, research centers and programs they serve has always been strong, it is clear that we can do more to involve them in the guidance of the Institution overall. As the Regents consider ways to reach out to the advisory boards, the senior management is doing the same by seeking out advisory board members for advice, requesting their participation in pan-Institutional initiatives, and by attending and participating in board meetings more frequently. I also convened a meeting with the chairs of all our advisory boards last January to share information and experience across boards.

#### **Governance**

While many of the governance reforms recommended by the Board of Regents last June were directed to the Board itself, the majority of these actions were the responsibility of Smithsonian management to implement. In some cases, as GAO points out, we deliberately revised the deadlines on some of the recommendations to be sure we were generating sound, workable policies and procedures. Reforms in the areas of financial, contracting, travel and spending policies in particular presented challenges because of the decentralized nature of Smithsonian practices in these areas. Adequately anticipating the

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**Appendix IV: Comments from the Smithsonian  
Institution**

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Mr. Mark L. Goldstein  
May 6, 2008

implications of a new requirement, training staff to carry it out, and installing controls to ensure it is properly enforced are all worthwhile but necessarily time-consuming exercises. In addition, many of these reform efforts presented the opportunity to revise and improve outdated or inefficient rules and practices which extended the time necessary to complete them. Only with the assistance and guidance from staff around the Institution – many of whom participated on the teams that were tasked with leading this effort – was it possible to meet the deadlines that were established by the Regents. In those cases where deadlines were revised, it was done so to ensure the end result was stronger and more likely to succeed.

In closing, the Smithsonian has taken this opportunity to strengthen its governance and improve itself in ways not necessarily anticipated by the Regents' 25 recommendations. We think this has made us a stronger Institution, and we look forward to working with the Board of Regents in the months and years ahead to assess whether we have achieved this goal. We appreciate your insights and will work to ensure the recommendations outlined in this report are successfully implemented.

Sincerely,

*Christian Simpson K.*

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# Appendix V: GAO Contacts and Staff Acknowledgments

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## GAO Contact

Mark Goldstein, Director (202) 512-2834 or [goldsteinm@gao.gov](mailto:goldsteinm@gao.gov)

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## Acknowledgments

In addition Andrew Von Ah, Assistant Director; Shane Bechtold; Seth Dykes; Delwen Jones; Jennifer Kim; Margaret McDavid; Kim McGatlin; Susan Michal-Smith; Amanda Miller; Sara Ann Moessbauer; Stanley Stenersen; and Alwynne Wilbur made key contributions to this report.

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