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**MANAGING THE PUBLIC'S BUSINESS:
FEDERAL GOVERNMENT CORPORATIONS**

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stance, FFRDCs cannot be used to perform quantity production and manufacturing work unless authorized by legislation. The OFPP Policy Letter and its guidelines do not apply to those activities of a commercial character governed by OMB Circular A-76, the Circular governing functions that may be contracted for by executive agencies.

"Other" Entities

Within the growing "quasi-government," there are additional organizations, some of which are amenable to classification and others that resist classification.

Congress, in addition to creating government corporations by statute, has historically chartered patriotic and charitable nonprofit organizations, such as the Red Cross (36 U.S.C. 1-9) and the National Academy of Public Administration (36 U.S.C. 2301). These charters, however, do not make the organizations "agencies of the United States" nor do they confer any powers of a governmental character. These organizations (there are about 80 congressionally chartered organizations) do not receive direct appropriations, they exercise no Federal powers, their debts are not covered by the full faith and credit of the United States, and they do not enjoy original jurisdiction in the Federal courts. In effect, the chartering process is honorific in character.⁴⁷ This honorific character, however, may be misleading to the public when such organizations feature statements that they are "chartered by Congress," thus implying a direct relationship to the Federal Government that does not in fact exist. Additionally, there may an implication that Congress is somehow overseeing these chartered organizations, which is not the case.⁴⁸ Because of continuing pressure to "charter" additional private organizations and occasional embarrassments raised by misuse of the "Congressional charter" label, the House Judiciary Committee in 1992 announced that it was ceasing the practice of awarding Congressional charters to organizations.⁴⁹

More recently, an executive Department has promoted the establishment of 73 nonprofit research centers (e.g., Albany Research Institute). The Administrator of the Veterans Administration (the predecessor agency to the Department) was authorized under P.L. 100-322 to establish "at any VA medical center a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research at the medical center." Such corporation must be incorporated under the laws of the State in which the VA medical center is located. These "Veterans Nonprofit Research Corporations" (VANRCs) derive and mix funds to operate these centers from both governmental and private sources and are supposed to be self-sustaining.

While these corporations may consider themselves private, nonprofit organizations, each corporation is required to submit to the Secretary of Veterans Affairs an annual report detailing its operations, activities, and accomplishments along with an audit report

⁴⁷The charters of the eighty congressionally chartered nonprofit organizations is found at 36 U.S.C.A. 1-4815.

⁴⁸Robert D. Poling, *Corporations Chartered by Act of Congress*, CRS Rept. 73-71 (Washington: Congressional Research Service, 1973).

⁴⁹Bill McAllister, "Congressional Charters Abolished: Law Recognizing Organizations Seen as Meaningless Nuisance," *Washington Post*, April 9, 1992, p. 25.

from an independent firm. And for purposes of the Inspectors General Act of 1978, the programs and operations of the VANRCs are considered to be programs of the Department and thus subject to IG oversight and rulings. The Secretary must submit to Congress annually a report on the number and location of the corporations established and the amount of government contributions given.

The Carnegie Commission on Science, Technology, and Government, through its Task Force on Nongovernmental Organizations, issued a report in 1993⁵⁰ attempting to categorize what it referred to generally as nonprofit, nongovernment organizations (NGOs) "that range from broad-spectrum general purpose scientific and technical groups, such as the American Association for the Advancement of Science to elite academies, such as the National Academy of Sciences and its affiliated National Research Council, from there to an extensive array of discipline-specific societies, such as the American Physical Society, through think tanks dedicated to government work, such as the RAND Corporation, and on to policy advocacy groups, such as the World Resources Institute." The modest conclusion of the report was: "Perhaps the chief utility of the Task Force's work lies in what it says to the governing bodies of nongovernmental organizations themselves. The report suggests that there may be family resemblances among those NGOs with which government should speak most seriously on matters of science and technology."⁵¹

Finally, there are entities which resist classification altogether, such as the American Institute on Taiwan (93 Stat. 14); Gallaudet University (11 Stat. 161; 20 U.S.C. 4301) and the "Enterprise" (also known as "Project Democracy"), set up by Col. Oliver North and the National Security Council to channel funds to the Nicaraguan forces challenging the Sandinista Government.⁵²

The executive branch looks significantly different in organizational terms today than in 1970. Outwardly, the similarities may be striking; there are still departments, agencies, and corporations. But the objectives of organizational management and the processes by which change is effected have been altered rather dramatically. Organizational integration, central management laws and principles, and firm lines of political accountability from the President to agencies is no longer the objective of most organizational management. Today, organizational disaggregation, under a range of rationales, appears to be the dominant motivating force in organizational management. While few argue for organizational disaggregation and program dispersion as a matter of general principle, most argue that the critical and unique nature of their agency/corporation is such that it should be exempted from coverage by many or all general management laws. The pattern today is for the

⁵⁰ Carnegie Commission on Science, Technology, and Government, *Facing Toward Governments: Nongovernmental Organizations and Scientific and Technical Advice* (New York: Carnegie Corporation, 1993).

⁵¹ *Ibid.*, p. 6. The Task Force came up with "eight leading descriptors of NGOs": Honorific; Consultative; Federative; Advocacy; Disciplinary or Professional; Representational; Policy-centered; and Quasi-nongovernmental ("quangos"), p. 24.

⁵² For a complete discussion of the "Enterprise," the free standing corporate body which was able to raise approximately \$48 million for its activities, see: U.S. Congress, House Select Committee to Investigate Covert Arms Transactions With Iran, *Iran-Contra Affair*, H. Rept. 100-433, 100th Congress, 1st session (Washington: U.S. Govt. Print. Off., 1987).

particular agency/corporate interest to claim primacy over the interests of the executive branch considered collectively.

CRS Report for Congress

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The Quasi Government: Hybrid Organizations with Both Government and Private Sector Legal Characteristics

Updated May 18, 2005

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standards relating to the preparation of audit reports by issuers.” The SEC appoints the five members of the full-time board, after consultation with the chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury. The Commission may remove members of the board “for good cause.” The rules of the board are subject to the approval of the Commission. Some observers were troubled that at the organizing meeting of this “private” board on January 9, 2003, the board voted themselves annual salaries of \$452,000, or \$52,000 more than the President of the United States and \$207,000 more than the chairman of the SEC. Similar private sector salaries were set for staff.⁶³

The stories of the SIPC and the PCAOB illustrate how the government can create a hybrid organization, in these instances organizations with predominately private-sector legal characteristics, to implement government policies and regulations. Ultimately, the SIPC and the PCAOB are agents of and accountable to the government through the SEC. The wisdom (and for some the legality) of this practice of delegating governmental functions to ostensibly private parties is a legitimate subject of debate.

Organizations Independent of, But Dependent Upon, Agencies. The Henry M. Jackson Foundation provides an example of an organization independent of, but dependent upon, an agency of the federal government. In 1982, Congress passed legislation to establish a Foundation for the Advancement of Military Medicine (P.L. 98-36; 97 Stat. 200). Five months later, the foundation was renamed the Henry M. Jackson Foundation after a Senator with a long record of support for military medicine. The enabling legislation provided that the foundation “shall not for any purpose be an agency or instrumentality of the United States Government. The Foundation shall be subject to the provisions of this section and, to the extent not inconsistent with this section, the Corporations and Associations Act of the State of Maryland.” This language indicates there is intended to be legal distance between the nonprofit organization and the United States government.

The mission of the foundation, by contrast, emphasizes that a close organizational relationship be established between the foundation and the Uniformed Services University of the Health Sciences (USU) of the Department of Health and Human Services. “It shall be the purpose of the Foundation (1) to carry out medical research and education research projects under cooperative agreements with the USU; (2) to serve as a focus for interchange between military and civilian medical personnel, and (3) to encourage the participation of the medical, dental, nursing, veterinary, and other biomedical sciences in the work of the Foundation for the mutual benefit of military and civilian medicine.” (10 U.S.C. 178) The nine-member board of the foundation includes two current Senators and two Representatives serving in an *ex-officio* capacity.

The foundation works to develop a research infrastructure involving federal military medical personnel and private medical personnel and facilities. It is affiliated with the USU and receives funding from private sources as well as the

⁶³ Stephen Labaton, “Six Months Later, New Audit Board Holds First Talk: Sets Own Pay at \$452,000,” *New York Times*, Jan. 10, 2003, p. 1.

USU. The foundation provides research and grants management services to military medical researchers; manages clinical trials and develops private-public partnerships; and provides general support for military medical education. In 2004, the foundation employed 1,400 persons and supported or administered over 650 research projects.⁶⁴

The question arises: why is such a foundation needed? The foundation has said:

Because government employees cannot accept money or in-kind gifts from private sources, the Foundation serves a vital function by facilitating collaborative relationships between private industry, academia, and military medicine. One way we do this is securing private funding to support military medical educational programs....⁶⁵

Similarly, the Department of Veterans Affairs (VA) has a network of nonprofit corporations attached to its medical centers. By law (P.L. 100-322; 102 Stat. 487), the Secretary may authorize the establishment at any VA medical center of a nonprofit research and education corporation (NPC), to be chartered under the resident state law, "to provide a flexible funding mechanism for the conduct of approved research."⁶⁶ The law reads: "Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations." (38 U.S.C. 7361(a)).⁶⁷

As of 2004, the latest data available, 92 VA medical centers had received approval for the formation of nonprofit research corporations. Presently, 88 are active in 40 states (e.g., Veterans Medical Research Foundation of San Diego; Albany Research Institute of New York).⁶⁸ They derive their funds from both federal and non-federal sources. In 2003, "NPCs reported \$185.2 million in revenues including interest income and other miscellaneous receipts."⁶⁹

⁶⁴ Henry M. Jackson Foundation, HJF Overview Sheet, Dec. 2004, available at [http://www.hjf.org/about/factsheet12_04.pdf].

⁶⁵ See [<http://hjff.org/about/privatesupporters.html>].

⁶⁶ These entities have also been referred to as medical center research organizations.

⁶⁷ VA regulations for these entities may be found in *VA Handbook 1200.17, VA Research and Education Corporations* (Washington: VA, 2001), available at [http://www1.va.gov/vhapublications/ViewPublication.asp?pub_ID=371]; and *VA Handbook 1400.2, VA Education Corporations authorized by Title 38 United States Code (U.S.C.) Sections 7361 Through 73* (Washington: VA, 2001), available at [http://www.navref.org/about/mem_handbook_14002.htm].

⁶⁸ These data were drawn from National Association of Veterans' Research and Education Foundations (NAVREF), *Compilation of Year 2003 Annual Reports submitted to VA* (Bethesda, MD: NAVREF, June 1, 2004), p. 3, at [http://www.navref.org/library/Annual_Reports.htm].

⁶⁹ *Ibid.*, p. 4.

The Secretary appoints the boards of all corporations, which must in each instance include the director of the medical center, the chief of staff and assistant chief of staff of the medical center, and such other public members as the bylaws of the corporation direct. Each of the corporations has an executive director appointed by the board of directors with the concurrence of the Chief Medical Director of the Department. The corporation may employ such employees as it considers necessary and fix their compensation. The corporations come under the jurisdiction of the Department's Inspector General. The directors and employees of the corporation "shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions" (38 U.S.C. 7366(c)(1)).

The medical center research organizations concept is not without its critics. Some NPCs have been faulted for expending funds on items not directly related to research (such as gifts and entertainment) and have been cited as in need of improved "accountability and oversight related to the administration of funds."⁷⁰ However, GAO has also reported that NPCs, have enhanced VA research efforts. Funds

collected by these nonprofits have been used to renovate laboratory space, purchase equipment, maintain VA research libraries, and cover travel expenses to conferences. In turn, the research environment has been able to attract highly qualified physicians, who often provide patient care, as well.⁷¹

Nonprofit Organizations Affiliated with Departments or Agencies.

There are also nonprofit organizations, chartered under state law, that voluntarily affiliate with a departmental or agency program. This option has recently been reflected in law and applied by the Department of the Interior. As discussed above, the National Park Foundation (NPF) is appropriately viewed as an "adjunct organization under the control of a department or agency," in this case the National Park Service of the Department of the Interior. The NPF was authorized by the National Park Omnibus Management Act of 1998 (P.L. 105-391; 16 U.S.C. 19o) to encourage the creation of nonprofit organizations with state charters to "assist and promote [philanthropy] at the individual national park unit level." The intent of this program is to create a large number ("the greatest number of national park units practicable") of local fund-raising partner organizations ("Park Partners"), each tied to a specific national park or national park program. For purposes of this report, it is worth noting that these Park Partners are to be created by persons within a community under their own state laws.

⁷⁰ Statement of Michael Slachta, Jr., Assistant Inspector General for Auditing, in U.S. Congress, Subcommittee on Oversight and Investigation and Subcommittee on Health, House Committee on Veterans' Affairs, *VA Research and NonProfit VA Research and Education Corporations*, 107th Cong., 2nd sess., May 16, 2002 (Washington, GPO, 2003), pp. 4-6, quote at pp. 5.

⁷¹ Testimony of Cynthia A. Bascetti, Director Healthcare — Veteran's Health and Benefits Issues, U.S. General Accounting Office, Subcommittee on Oversight and Investigation, House Committee on Veterans' Affairs, *VA Research and NonProfit VA Research and Education Corporations*, 107th Cong., 2nd sess., Sept. 19, 2002 (Washington, GPO, 2003), pp. 19-21.