

**STATEMENT OF
ROBERT FLAAK
DIRECTOR
COMMITTEE MANAGEMENT SECRETARIAT
U.S. GENERAL SERVICES
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES
JULY 25, 2007**



Mr. Chairman, Members of the Committee, I am pleased to discuss with you today the important role played by Federal advisory committees in achieving the missions assigned to the Executive Branch.

More than a quarter-century before the enactment of the Federal Advisory Committee Act (FACA) in 1972, the Government began to recognize the important role played by advisory committees in developing effective policies. While the use of citizen-advisors has its roots in the earliest efforts of the Nation's leaders to obtain objective and informed advice, it was not until after the end of World War II that advisory committees became institutionalized as a unique tool of democratic government. For example, it was an advisory committee, the Hoover Commission, whose work laid the foundation for the creation of the General Services Administration (GSA) in 1949.

As the influence and number of advisory committees grew, so did concerns within the Executive and Legislative Branches regarding their management, cost, and accountability. In 1962, President Kennedy issued Executive Order 11007 establishing guidelines for using such groups. These guidelines were expanded in 1964, with the issuance of the original Bureau of the Budget Circular A-63.

Federal information policy relating to the accessibility of government records was revised in 1966, following the enactment of the Freedom of Information Act (FOIA). In 1972, similar openness policies were applied to the use of advisory committees through the enactment of FACA. Later in the 1970's, the two remaining cornerstones of Federal

access policy, the Privacy Act (1974) and the Government in the Sunshine Act (1976) were enacted by the Congress.

The Congress passed the Federal Advisory Committee Act in 1972 to accomplish two important objectives: (1) to establish the means for providing Congressional and Executive Branch oversight over the number and costs of advisory committees; and (2) to ensure that advisory committees operate in plain view of the public. Simply stated, the Act's purpose is to illuminate how agencies make decisions based upon advice and recommendations from individuals outside of Government, while also making sure that the costs to support advisory committees are commensurate with the benefits received. Since 1972, the Act's coverage has been extended to more than 4,300 advisory committees made up of an estimated 950,000 members.

Today, advisory committees are used by over 60 agencies to address issues that reflect the complex mandates undertaken by the Government. During fiscal year 2006, over 65,000 committee members served on 1,000 committees and provided advice and recommendations on such matters as the safety of the Nation's blood supply, steps needed to address the management of natural resources and the country's national defense strategies.

OVERVIEW OF GSA RESPONSIBILITIES

Several important government-wide roles and responsibilities are assigned by the Act to the Administrator of General Services and to the Committee Management Secretariat which, taken together with those specific functions reserved for the Congress and Executive Branch Departments and agencies, are designed to improve

the management and accountability of advisory committees. Among the statutory responsibilities assigned to the Administrator are:

- Conducting an annual comprehensive review covering the performance of, and need for, existing advisory committees (section 7(b));
- Issuing regulations, guidelines, and management controls of governmentwide applicability (section 7(c));
- Providing for adequate notice to the public regarding committee meetings (section 10(a)(2)(3));
- Issuing guidelines on committee member compensation in conjunction with the Office of Personnel Management (section 7(d));
- Providing for follow-up reports on public recommendations of Presidential advisory committees (section (6(b)); and
- Assuring that advisory committees are established in accordance with the Act's requirements (section 9).

OVERVIEW OF AGENCY RESPONSIBILITIES

Responsibilities assigned to agencies that sponsor advisory committees subject to FACA include:

- Issuing and maintaining uniform administrative guidelines and management controls (section 8(a));
- Appointing a Committee Management Officer (CMO) to provide oversight of the agency's entire committee inventory (section 8(b));
- Consulting with the Secretariat regarding proposals to establish advisory committees (section 9(a)(2));

- Filing Charters with the Congress prior to initiating committee activities (section 9(c));
- Maintaining records, minutes, and reports covering closed meetings (section 10(b)(c)(d));
- Appointing a Designated Federal Officer (DFO) for each committee (section 10(e));
- Maintaining financial records (section 12(a));
- Providing support services (section 12(b)); and
- Terminating advisory committees as appropriate, consistent with FACA (section 14(a)(1)(A)).

FACA PROCEDURES

While FACA is generally recognized for its emphasis on justifying the number and costs of advisory committees, its provisions governing access to committee meetings and records are equally important. FACA's goal is to provide the broadest possible contemporaneous access to meetings of, and materials generated for or by, Federal advisory committees during their deliberations. In particular, Section 10 of the Act provides that:

- Each meeting of an advisory committee must be open to the public, except for those closed or partially-closed pursuant to specific exemptions contained in the Government in the Sunshine Act (section 10(a)(2));
- Timely notice of each meeting must be published in the Federal Register (section 10(a)(2));

- Interested persons may appear before, or file statements with, an advisory committee, subject to reasonable operating procedures established by an agency (section 10(a)(3));
- Documents prepared for or by, or otherwise made available to, an advisory committee must be accessible for public inspection and copying at a single location, subject to exclusions provided under the FOIA (section 10(b)); and
- Minutes of each open or partially-open meeting must be kept and made available to the public (section 10(c)).

Agency CMOs are responsible for implementing FACA on behalf of the agency head. Each DFO must work with their respective CMO to implement the Act's requirements at the individual committee level. Together, the CMO and DFO are responsible for ensuring compliance with FACA, the agency's internal operating procedures, regulations issued by GSA, and any other applicable statutes or regulations, such as those issued by the United States Office of Government Ethics (OGE), the National Archives and Records Administration (NARA), or the Office of Personnel Management (OPM).

COMMITTEE COMPOSITION AND RELATIONSHIP TO AN AGENCY

The Act does not include provisions covering individual committee member conflicts of interest. The applicability of conflict of interest laws and various ethical requirements for members of advisory committees who serve as Special Government Employees (SGEs), are covered by other laws and regulations issued by the U.S. Office of Government Ethics.

The Act, however, does include two important provisions designed to promote the objectivity of advisory committee deliberations. First, sections 5(b)(2) and (c) require that “the membership of the advisory committee...be fairly balanced in terms of the points of view represented and the functions to be performed by the committee.” Second, sections 5(b)(3) and (c) require “provisions to assure that the advice and recommendations will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” Thus, while the Act stresses the importance of assuring an advisory committee’s independent judgment, it also requires that the composition of advisory committees reflect the expertise and interests that are necessary to accomplish the committee’s mission.

The Act does not define those factors that should be considered in achieving “balance.” However, the Secretariat’s regulations provide that, “...*in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee. Committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.*” (41 CFR 102-3.60(b)(3)) In their efforts to balance the points of view of a committee’s membership, agencies focus primarily on the subject matter to be addressed by the committee; nevertheless, while not required by law, other factors may be appropriate in relation to a committee’s function, such as geographical representation; racial or ethnic diversity; occupational affiliation; or the need to consult with State, local, or tribal governments.

Similarly, FACA does not outline specific steps that must be taken to ensure that advice and recommendations offered by an advisory committee are free from inappropriate influence by the appointing authority or special interests. Accordingly, each agency is responsible for developing specific operating procedures, consistent with the Act and GSA's regulations to ensure an advisory committee's independence, and to promote a balanced committee membership.

FACA'S SYSTEM OF CHECKS AND BALANCES

Although the Act is quite detailed in the specific procedures agencies must follow with respect to the establishment of advisory committees, the conduct of meetings, and the availability of records, it provides substantial flexibility to agency heads in other areas, such as membership selection and tenure. GSA believes this is appropriate given the diverse needs of the Executive Branch and the necessity for agencies to quickly adopt new operating procedures where conditions warrant.

FACA also includes a variety of procedural safeguards to ensure that advice and recommendations tendered by an advisory committee are properly obtained by an agency through a public process prior to final agency action. In particular, the Act's provisions requiring open meetings and summaries of closed or partially-closed meetings, the ability of the public to provide written or oral statements to a committee, and access to committee minutes and records reinforce the Act's goals of maintaining committee independence and freedom from inappropriate influence of special interests. These "checks and balances," rooted firmly in the principle of government in the sunshine, have contributed to the success of advisory committees over the past thirty-five years.

COMPLIANCE AND OVERSIGHT

The Secretariat provides agencies with the tools to ensure successful oversight of their federal advisory committee program, using a combination of shared management approaches, web-based tools, interagency coordination, and the application of best practice guidance. Compliance and oversight are managed by the Secretariat through the following:

- Secretariat Desk Officers coordinate advisory committee establishments, renewals and terminations, FACA policy interpretation, and best practice guidance on a continuous basis with assigned Committee Management Officers (CMO);
- The Secretariat uses a web-based Shared Management System to manage and compile data required in the completion of the annual comprehensive review (ACR) of advisory committees required by the Act (section 7(b)). Agency compliance is measured via a publicly-accessible scorecard (red-yellow-green);
- The Secretariat has incorporated performance measures for advisory committees in the Shared Management System – data are collected from individual advisory committees, with government-wide and agency roll-up;
- The Secretariat administers an Advisory Committee Engagement Survey (ACES) every other year which measures the extent to which sponsoring agencies address factors that are critical to the success of advisory committees;

- The Secretariat chairs the *Interagency Committee on Federal Advisory Committee Management* which brings all CMOs together quarterly for discussions on FACA policy, best practices and compliance issues;
- The Secretariat conducts a FACA training course which addresses the following topics: FACA history, laws related to FACA, legal and other ethics issues, recordkeeping, committee operations, membership processes, public interactions, and the use of the Secretariat's Shared Management System.

Mr. Chairman, members of the committee, that concludes my prepared statement. I would be pleased to answer any questions you may have.