

General Overview

- The general public and private experts have a key role in advising the government.
- Task forces, boards, commissions, groups, etc., formed over the years to render advice to the executive branch.

Passage of FACA

- There were concerns over the number and costs of advisory committees and the lack of accountability to the public.

→ *Over 1400 federal advisory committees existed in 1972*

- Amidst the concerns, Congress enacted the “Federal Advisory Committee Act (FACA)” in 1972.

FACA

- Title 5 United States Code Appendix (5 U.S.C. App.)
- FACA establishes the guidelines under which federal advisory committees must operate.
- FACA governs the creation, function, operation, administration, and oversight of advisory committees.

FACA – *creation* of advisory committees (authority)

1. By law – statute;
2. By executive order of the President;
3. By agency authority

FACA – *creation* of advisory committees (filing)

Committee charter

- a. no advisory committee can meet or take any action until charter is filed;
- b. charter spells out the committee's objectives and scope of its activities.

Along with FACA, the Committee Charter sets the boundary of the committee's duties and scope of responsibility.

FACA – *function* of advisory committees

Solely for advisory functions

- Unless otherwise specifically provided by statute or Presidential directive, **advisory committees shall be utilized solely for advisory functions.**
- Determination of action to be taken and policy to be adopted shall be made solely by the President or an officer of the Federal Government.

What can an advisory committee do?

- *Provide recommendations and report to the appropriate federal officer on matters **within the committee's scope of duties and objectives.***

FACA – *operation* of advisory committees

Meetings - Generally

- Each advisory committee meeting is OPEN to the public.
 - unless the President or appropriate Federal Officer determines portion of such meeting may be closed to the public in accordance with Govt in Sunshine Act
- Timely notice for each meeting shall be published in the Federal Register at least 15 calendar days prior to the meeting.
- Each meeting must be held at a reasonable time and in a manner or place reasonable accessible to the public.

FACA – *operation* of advisory committees

Meetings - Generally

- Any member of the public is permitted to file a written statement with the committee.
- Any member of the public is permitted to speak before the committee subject to reasonable guidelines set by the committee.

FACA – *operation* of advisory committees

Meetings – Agenda and Procedures

- All meetings must be called or approved in advanced by the designated officer or employee of the Federal Government (Designated Federal Officer (DFO)).
- DFO must chair or attend each meeting of the advisory committee.
- DFO sets the rules
 - procedures for the conduct of advisory committee meetings and operation, i.e., adjournment of meetings.

FACA – *operation* of advisory committees

Meetings – Record Keeping

- Detailed minutes of each meeting must be kept.
 - record of persons present; description of matters discussed and conclusion reached; and copies of all reports received, issued or approved by the committee

FACA – *operation* of advisory committees

Public Access to Committee Records

- Committee records are made available to the public.
- Committee records defined broadly.
 - ”reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the committee”
- Exception – withholding under 5 U.S.C. 552 (FOIA Exemptions)

FACA – *administration* of advisory committees

General Services Administration

- reviews the charter and activities of federal advisory committees and issues regulatory guidelines consistent with FACA.

FACA – *oversight* of advisory committees

Presidential Report

- The President submits an annual report to Congress on the activities, status, and changes in composition of advisory committees in existence during the preceding fiscal year.

FACA Trivia

- How many active federal advisory committees, total committee members, and total agencies were involved there, as of the end of fiscal year 2006)?

930 active committees consisting of 60,000+ members covering 53 agencies.

FACA – topics and issues

1. Sub-committee

a. smaller group/division/body created by an advisory committee

b. role – generally, presents research, analysis, preliminary conclusion to the committee as a whole

c. rules re: open meetings and public access to records DO NOT APPLY to sub-committee meetings and records

- key: reports/analysis/deliberation reached by the sub-committee must be presented to the committee as a whole for final substantive review and approval

FACA – topics and issues

2. Questions/disputes over committee operation and meeting procedures
 - a. DFO sets the rules
 - b. In addition, DFO approves or calls the meeting of the committee and sub-committee(s)

3. Questions/disputes over scope of authority and duties of the committee
 - a. Recall that the Statute/Charter sets for the authority for the committee
 - b. The agency, via DFO, interprets the scope of authority and duty of the committee.

FACA – topics and issues

4. Proprietary information provided/shared

a. Recall that information “made available to,” or “prepared for or by” the committee shall be made available to the public unless 5 U.S.C. 552 applies

b. The agency makes the determination whether to invoke exemptions under 5 U.S.C. 552 to withhold information

5. Representation of the committee/agency

a. Advisory committees serve solely an advisory role – to make recommendation to the executive branch; adoption of any recommendations/reports and any policy decisions are made by the federal officer --- Advisory committees MAKE NO POLICY DECISIONS

b. Therefore, a committee does NOT speak for or act on behalf of the agency or federal officer

FACA – topics and issues

5. Representation of the committee/agency (continued)

c. In addition, individual committee members should be careful to ensure that their personal statements are not attributed to the position of the committee as a whole or that of the agency

FACA – topics and issues

6. Compensation

- a. Generally, agency regulation prohibits payment of committee members for their services on the committee
- b. Travel and per diem expenses - per agency decision

THANK YOU

For serving on the AAQTF!

