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 of 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 advance 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
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!