

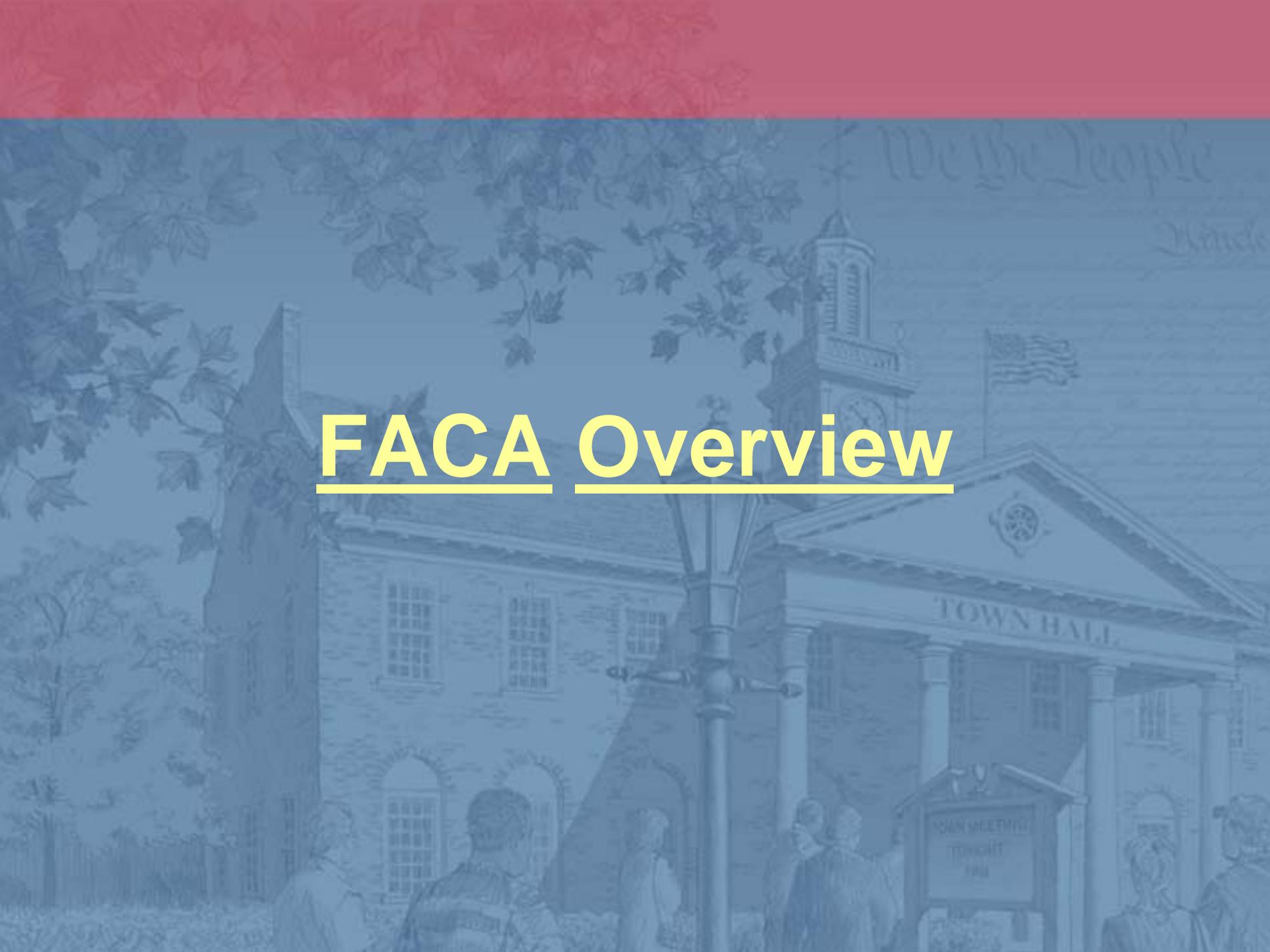
Federal Advisory Committee Act (FACA) Overview

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FACA Overview

FEDERAL ADVISORY COMMITTEE ACT (FACA) FISCAL YEAR (FY) 2006 COSTS AND ACTIVITY

Committee Costs:

- **Nearly \$400 Million in total expenditures**
- **41% of that cost is for Federal staff support**
- **20% of the total is for travel and per diem**

Committee Activity:

- **900 to 950 Committees in existence at any time**
- **Over 45,000 Committee members**
- **Nearly 55 Executive Departments and Agencies**
- **Approximately 50 Committees directly advise the President**
- **More than 7,000 meetings held**
- **Nearly 1,000 reports issued**

FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS

Federal Advisory Committee Act

Public Law 92-463, effective January 5, 1973. Requires the establishment of a Committee Management Secretariat to provide Government-wide oversight of advisory committees. In addition, the Act establishes a framework covering the creation, management, operation, and termination of all advisory committees reporting to the Executive Branch.

Government in the Sunshine Act

Public Law 94-409, effective March 12, 1977. Section 5 (c) amended Section 10(d) of the Federal Advisory Committee Act. Serves as the basis for closing all or part of an advisory committee meeting.

FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS (Continued)

Unfunded Mandates Reform Act

Public Law 104-4, effective March 22, 1995. Section 204(b) provides for an exclusion from the Federal Advisory Committee Act for interactions between Federal officials and their State, local, or tribal counterparts while acting in their official capacities involving shared intergovernmental responsibilities or administration.

Federal Advisory Committee Act Amendments of 1997

Public Law 105-153, effective December 17, 1997. Amends FACA to clarify public disclosure requirements applicable to the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA), and excludes from the Act any committee created by these organizations. Also expands the exclusions from the definition of advisory committee to include permanent part-time officers or employees of the Federal Government.

FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS (Continued)

Executive Order 12838

Effective February 10, 1993. Directs the Heads of all Departments and agencies to reduce the number of advisory committees "not required by statute" by one-third. Requires that the establishment of all new discretionary advisory committees be approved by the Director of the Office of Management and Budget (OMB), consistent with identified needs relating to national security, health or safety, or similar national interests.

Vice Presidential Memorandum, dated June 28, 1994

Expands the President's policy of controlling the number of Federal advisory committees by requiring Departments and agencies to: (a) work with the Congress to eliminate unneeded committees mandated by statute; (b) generally not support proposals to create new committees through legislation; and (c) reduce committee costs by at least five percent.

FACA SELECTED STATUTES, REGULATIONS, AND POLICY DOCUMENTS (Continued)

OMB Circular A-135, dated October 5, 1994

Provides guidance and instructions on the management of Federal advisory committees and requires Executive Departments and agencies to establish a committee planning and review process. Information submitted to OMB and the General Services Administration (GSA) serves as the basis for approving the establishment of new discretionary advisory committees under Executive Order 12838.

GSA Federal Property Management Regulation – Final Rule

41 CFR Part 101-6, Federal Advisory Committee Management. Provides guidance regarding the implementation of the Federal Advisory Committee Act. Superseded by 41 CFR Parts 101-6 and 102-3 on July 19, 2001.

FEDERAL ADVISORY COMMITTEE ACT “BIG PICTURE”

- Enacted in 1972 (P.L. 92-463); codified at 5 U.S.C. App.
- GSA published its initial and revised “Federal Advisory Committee Management; Final Rule,” 41 CFR Part 101-6, in the *Federal Register* on December 2, 1987 and October 5, 1989, respectively.
- The new “Federal Advisory Committee Management; Final Rule,” 41 CFR Parts 101-6 and 102-3, was published in the *Federal Register* on July 19, 2001.

FEDERAL ADVISORY COMMITTEE ACT “BIG PICTURE” (Continued)

- FACA is one of the “Four Pillars of Openness in Government” Statutes:
 - *Administrative Procedure Act (APA)* – 1946
[5 U.S.C. 551-553]
 - *Freedom of Information Act (FOIA)* – 1966
[5 U.S.C. 552]
 - *Federal Advisory Committee Act (FACA)* – 1972
[5 U.S.C. App.]
 - *Government in the Sunshine Act* – 1977
[5 U.S.C. 552b]

FEDERAL ADVISORY COMMITTEE ACT

“BIG PICTURE” (Continued)

- **The Act was designed to fulfill two basic purposes:**

- ***To Enhance Public Accountability of Advisory Committees.*** To control the undue influence of special interests by balancing committee membership, and to ensure that public access to committee deliberations is maximized.
- ***To Reduce Wasteful Expenditures on Advisory Committees.*** To improve the overall management of committee activities by establishing a set of management controls. These controls were designed to, among other objectives:
 - Monitor Federal advisory committee costs;
 - Identify and eliminate unproductive and/or unnecessary committees; and
 - Provide for an annual report of committee activities and accomplishments to the Congress.

FEDERAL ADVISORY COMMITTEE ACT

“BIG PICTURE” (Continued)

- **Defines an advisory committee:**
 - “Any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations....”
[41 CFR § 102-3.25; App. A-I,-II, & -III to Subpart A]
 - But not *subcommittees*... [41 CFR §§ 102-3.25, 3.35 & 3.145; & p. 37729]
 - Other committees and groups not covered under FACA or GSA’s Final Rule [41 CFR § 102-3.40]
- **Provides standards that govern the establishment, operation, administration and termination of Federal advisory committees**
- **Federal advisory committees exist to advise and recommend — not to decide.**
- **FACA, similar to NEPA, was not intended to be a public participation statute, *per se*.**

FEDERAL ADVISORY COMMITTEE ACT

“BIG PICTURE” (Continued)

- **Four sources of authority for establishing an advisory committee:**
 - **“(a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);**
 - **(b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);**
 - **(c) *Authorized by statute.* By law where the Congress authorizes, but does not direct the President or an agency to establish it (*discretionary*); or**
 - **(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).”**

[41 CFR § 102-3.50]

FEDERAL ADVISORY COMMITTEE ACT

MAJOR REQUIREMENTS

- **FACA was intended to authorize the establishment of a system governing the creation and operation of advisory committees in the Executive Branch of the Federal Government. [see 41 CFR §§ 102-3.10 & 3.40]**
- **Agencies must establish uniform administrative guidelines and management controls that are consistent with the Act and the GSA Rule. [41 CFR §§ 102-3.105(b) & 3.115(c)]**
- **Agencies must maintain systematic information on the nature, functions, and operations of their advisory committees “for the duration of the advisory committee.” [41 CFR §§ 102-3.170 & 3.175(e)]**
- **Agency heads must designate Committee Management Officers (CMOs) who are responsible for exercising controls and supervision over the committee management program. [41 CFR §§ 102-3.105(c) & 3.115]**

FEDERAL ADVISORY COMMITTEE ACT

MAJOR REQUIREMENTS (Continued)

- **Committees must be chartered before they can meet or conduct any business. [41 CFR §§ 102-3.70 & 3.75]**
- **Charters must be renewed every two years or they will be terminated under the sunset provisions of Sec. 14 of the Act, unless otherwise provided by law. [41 CFR § 102-3.55]**
- **Advisory committee memberships are to be fairly balanced in terms of the points of view represented and the functions to be performed. [FACA Sec. 5(b)(2); 41 CFR §§ 102-3.30(c) & 3.60(b)(3); Appendix A-III. to Subpart B]**
- **Advisory committee meetings are required to be open to the public, with limited exceptions. Meeting notices and agendas must be published in the *Federal Register* to accommodate public participation. [41 CFR §§ 102-3.150, 3.155 & 3.175(c)]**

FEDERAL ADVISORY COMMITTEE ACT MAJOR REQUIREMENTS (Continued)

- **Designated Federal Officers (DFOs)** must approve all meetings and agendas, and attend meetings. [41 CFR § 102-3.120]
- **Detailed minutes** of each advisory committee meeting must be kept and must contain:
 - a. Time, date and place of the meeting;
 - b. A list of all persons who were present;
 - c. A complete and “accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter” (*i.e.*, any conclusions reached, including any advice or recommendations provided by the committee); and
 - d. “Copies of each report or other document received, issued or approved by the advisory committee at the meeting.”

[41 CFR § 102-3.165; see also §§ 102-3.170 & 3.175(e)]

FEDERAL ADVISORY COMMITTEE ACT MAJOR REQUIREMENTS (Continued)

- **Policies applying to advisory committee meetings:**
 - **“(a) Each advisory committee meeting [must be] held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities...;**
 - **(b) The meeting room or other forum selected [must be] sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public;**

[41 CFR § 102-3.140]

FEDERAL ADVISORY COMMITTEE ACT MAJOR REQUIREMENTS (Continued)

- **Policies applying to advisory committee meetings (continued):**
 - (c) Any member of the public is permitted to file a written statement with the advisory committee;
 - (d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and
 - (e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium [must meet] the requirements of this subpart.”

[41 CFR § 102-3.140]

FEDERAL ADVISORY COMMITTEE ACT

MAJOR REQUIREMENTS (Continued)

- **Recommendations of advisory committees should be the result of independent judgment.** [FACA § 5(b)(3); 41 CFR § 102-3.105(g)]
- **Advisory committees must be adequately funded by the appropriate agency.** [41 CFR § 102-3.95(a)]
- **Advisory committee members may be subject to ethics and conflict-of-interest statutes, regulations and other rules.** [41 CFR § 102-3.105(h); Appendix A-IV. to Subpart C; and 5 CFR § 2634.903, .904 (OGE)]
- **Agencies should practice openness and seek to be as inclusive as possible.** [41 CFR § 102-3.95(d)]
- **Agencies should continually seek feedback from advisory committee members regarding effectiveness of advisory committee's activities; and should regularly communicate to members how their advice has affected Agency programs and decision-making.** [41 CFR § 102-3.95(e)]

FEDERAL ADVISORY COMMITTEE ACT

MAJOR REQUIREMENTS (Continued)

- ***Preparatory and administrative* meetings are not subject to the notice and open meeting requirements of FACA [41 CFR § 102-3.160(a) & (b)]**
- **All advisory committee documents must be available for contemporaneous public inspection and copying until the committee ceases to exist. [41 CFR §§ 102-3.170 & 3.175(e); & pp. 37731–2]**
- **Records must be maintained which will fully-disclose costs for the purpose of GAO audits and the FACA Annual Report. [41 CFR §§ 102-3.175(b) & (e)]**
- **Advisory committees will be terminated as soon as:**
 - a. their stated objectives have been accomplished;**
 - b. the committee's work has become obsolete; or**
 - c. the cost of the committee's operation is excessive in relation to the benefits accruing to the Federal Government.**

[41 CFR §§ 102-3.30(b) & 3.55]

FEDERAL ADVISORY COMMITTEE ACT AGENCY/DEPARTMENTAL RESOURCE TEAM

- **Senior Program and Management Officials**
- **Agency Committee Management Officer (CMO)**
- **Designated Federal Official (DFO) for each Committee**
- **Office of General Counsel Representative**
- **Designated Agency Ethics Official (DAEO)**
- **Personnel/Human Resources Staff**
- **Financial Management Staff**
- **Travel Management Staff**
- **Procurement Officials**
- **Regulatory Clearance Officer**
- **Records Management Officer**
- **FOIA/Privacy Act Manager**
- **Congressional Relations Staff**
- **Public Affairs Officer**
- **Telecommunications Specialists**
- **Security Staff**

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