

**STATEMENT  
OF  
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U.S. GENERAL SERVICES ADMINISTRATION**

***INFORMATION POLICY, CENSUS, AND NATIONAL ARCHIVES  
SUBCOMMITTEE***

***OVERSIGHT AND GOVERNMENT REFORM COMMITTEE***

***Tuesday, October 20, 2009***

***2154 Rayburn House Office Building***

***2:00 p.m.***



Mr. Chairman, Ranking Member McHenry and Members of the Subcommittee, my name is Robert Flaak. I am the Director of the General Services Administration's (GSA) Committee Management Secretariat. Thank you for the opportunity to discuss with you today the important role played by Federal advisory committees in achieving the missions assigned to the Executive Branch, and, in particular, the use of such committees by the National Archives and Records Administration (NARA).

### **Genesis and Purpose of Federal Advisory Committees**

In 1972, Congress passed the Federal Advisory Committee Act (FACA) (Act) 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.

Today, advisory committees are used by 49 Executive departments and agencies to address issues that reflect the complex mandates undertaken by the Government. GSA and Executive departments and agencies are currently reviewing the fiscal year (FY) 2009 data on Federal advisory committees, however during FY 2008, over 63,000 committee members served on more than 900 committees and provided advice and recommendations on such diverse matters as vaccine research and safety, nuclear, biological and chemical threat reduction, civil rights, veterans' health and rehabilitation, management of natural resources, and strategies for national defense, protection of the environment and human health and welfare.

## **Implementation of FACA by GSA**

Several important government-wide roles and responsibilities are assigned by the Act to GSA's Administrator and to GSA's 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:

- Establishing a Committee Management Secretariat within GSA responsible for FACA oversight (section 7(a));
- Conducting an Annual Comprehensive Review (ACR) of the activities and responsibilities of each advisory committee (section 7(b));
- Requesting information from agencies to help GSA carry out its responsibilities (section 7(b));
- Issuing administrative guidelines and management controls applicable to advisory committees (section 7(c)); and
- Issuing guidelines on committee member compensation in conjunction with the Office of Personnel Management (section 7(d)).

The Secretariat provides agencies with 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 programs:

- FACA Implementing Regulations (41 CFR 102-3) – The FACA Rule provides an agency with regulatory guidance on the implementation of FACA. The current rule was issued in July 2001 and was developed by

an interagency work group chaired by GSA. The guidance in the rule follows from the language in FACA and incorporates relevant case law.

- FACA Case Law Digest – This is a compendium of FACA Case Law that was developed by an interagency team chaired by GSA. It provides citations and summaries of FACA-relevant case law up through this calendar year.
- GSA FACA Desk Officers – All Executive departments and agencies with Federal advisory committees are assigned to a Committee Management Secretariat FACA Desk Officer. Desk Officers coordinate advisory committee establishments, renewals and terminations, providing FACA policy interpretation and best practice guidance with the agencies' Committee Management Officers (CMOs) and other senior agency officials.
- FACA Shared Management System (SMS) - The Secretariat uses a Web-based Shared Management System (also known as the FACA Database) to manage and compile meeting, membership, charter, cost and other administrative and operational data on all federal advisory committees. This system is visible to the public via the GSA website, providing data on FACA committees back to 1992.
- Annual Comprehensive Review (ACR) – The Annual Comprehensive Review of Federal advisory committees is required by section 7(b) of the Act. Committee Management Officers and Designated Federal Officers of Executive departments and agencies use the FACA Shared Management System to evaluate agencies compliance with FACA, and to document advisory committee costs, charters, and information on their meetings and membership. GSA FACA Desk Officers evaluate these data and display compliance with reporting requirements on GSA's website using a scorecard (red-yellow-green) following the close of each fiscal year.
- Performance Measures - The Secretariat has incorporated performance measures for advisory committees in the Shared

Management System. Data is collected from individual advisory committees during the ACR, with government-wide and agency roll-up. These measures examine advisory committee outcomes such as number of recommendations accepted by an agency, whether recommendations are acted upon, and the estimated value of the advice provided by advisory committees.

- Advisory Committee Engagement Survey (ACES) -The Secretariat periodically administers an online survey to advisory committee members and staff, and FACA decision makers. ACES measures the extent to which sponsoring agencies address factors that are critical to the success of advisory committees.
- Interagency Committee on Federal Advisory Committee Management (CMO Council) - Chaired by GSA, this 50-member interagency council brings all Executive department and agency Committee Management Officers (CMOs) together on a quarterly basis for discussions on FACA policy, best practices, training, and compliance issues. The Council hosts numerous interagency work groups to manage FACA issues of interest (e.g., updating the case law digest; developing regulatory updates; improving training programs; refining the ACES questionnaire; developing updates to the SMS; developing presidential transition packages for FACA programs; etc.).
- FACA Training Program – Since 1989, the Secretariat has conducted a FACA training program which includes a formal introductory FACA course given five to six times a year to approximately 300 Federal employees. GSA's introductory FACA course 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. The Secretariat administers annual CMO Training Seminars, a biennial FACA Training Conference, and is preparing to offer FACA Legal

Seminars beginning this fiscal year. All instructors are subject matter experts from agencies with FACA responsibilities.

### **Implementation of FACA by Executive Departments and Agencies**

The Act also assigns specific responsibilities to Executive departments and agencies, including the National Archives and Records Administration, which sponsor Federal advisory committees. These include:

- Establishing uniform administrative guidelines and management controls (section 8(a));
- Appointing a Committee Management Officer (CMO) to provide oversight of the agency's advisory committee program (section 8(b));
- Consulting with GSA's Committee Management Secretariat regarding proposals to establish advisory committees (section 9(a)(2));
- Filing Charters with the Congress and/or GSA prior to initiating committee activities (section 9(c));
- Maintaining records, minutes, and reports covering closed meetings (section 10(b), (c), and (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)).

Agency CMOs are responsible for implementing FACA on behalf of the agency head. Within each agency, individual DFOs must work with their respective CMO to implement the Act's requirements at the committee level. Together, the CMO and DFO are responsible for ensuring compliance with FACA, the agency's internal operating procedures, guidelines 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).

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. The Act includes two important provisions designed to promote the objectivity of advisory committee deliberations. First, section 5(b)(2) requires “the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the committee.” Second, section 5(b)(3) requires “provisions to assure that the advice and recommendations of the advisory committee 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 reflects 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, GSA has incorporated such factors into the FACA Regulations and Guidelines. The Regulations state 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. Advisory 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 specifically required by

FACA, 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. GSA describes these factors further in its Guidance which is contained in Section III of Appendix A to Subpart B, 41 CFR 102-3.

### **NARA Federal Advisory Committees**

918 active Federal advisory committees were managed by Executive departments and agencies during FY2008, with expenditures totaling \$344,000,000. During the same year, the National Archives and Records Administration managed five Federal advisory committees with a total expenditure of \$82,000. NARA managed the same committees during early FY2009, terminating one committee in June 2009. Governmentwide and NARA totals for FY2009 are still being evaluated pending completion of the Annual Comprehensive Review conducted by GSA and Executive departments and agencies. The five NARA committees are the:

- Advisory Committee on Preservation (Terminated in 2009);
- Advisory Committee on the Records of Congress;
- National Industrial Security Program Policy Advisory Committee;
- Advisory Committee on Electronic Records Archives; and
- Advisory Committee on Presidential Libraries.

On June 30, 2009, NARA determined that the Advisory Committee on Preservation, a committee established by agency authority, had completed its mission, and therefore, terminated the committee. According to data submitted by NARA in the FACA Shared Management System, this committee did not meet nor did it expend any funds during FY2006 through FY2009, other than \$1,000 during FY 2007.

The Advisory Committee on the Records of Congress is a statutory committee. It was established by Congress in 1990 (44 U.S.C. Sec. 2701). According to data submitted by NARA in the FACA Shared Management System during FY2009, the Committee met once, and meeting costs have yet to be updated. In FY2008 it met twice, in FY2007 it met once, and in FY2006 it met twice. NARA expended \$20,000 in each of those three years on the Committee's operation. NARA reports that the Committee has issued one recommendation during its lifetime.

The National Industrial Security Program Policy Advisory Committee is a Presidential advisory committee established by Executive Order 12829 in 1993. The Committee met twice during fiscal years 2007–2009, expending an estimated \$25,900 each year. In FY2006, it met once and again expended \$25,900. NARA reports that the Committee has issued three recommendations during its lifetime.

Mr. Chairman, in your letter to me you asked specifically about two of the NARA advisory committees: the Advisory Committee on Electronic Records Archives, and the Advisory Committee on Presidential Libraries. Both of these committees were established as agency authority committees, as such, they are discretionary and report to NARA.

The Advisory Committee on Electronic Records Archives is an agency authority committee established by NARA in 2005. According to data submitted by NARA in the FACA Shared Management System, from fiscal years 2006-2009, the Committee met twice each year and expended an average of \$38,000 in travel costs each year. Cost figures for FY2009 are still tentative pending reconciliation. According to its charter, the Committee is to serve as a deliberative body to advise the Archivist of the United States on technical, mission, and service issues related to Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the

ERA system. As a deliberative body, this committee does not typically use a formal recommendations mechanism and NARA reports no recommendations issued by this committee during its lifetime. Meetings minutes for the committee are available online at <http://www.archives.gov/era/acera/>. These minutes provide evidence the committee is active in its deliberative role (for example, 17 action items are identified from the minutes of the last two posted meetings alone).

The Advisory Committee on Presidential Libraries is an agency authority committee established by NARA in 1988. According to data submitted by NARA in the FACA Shared Management System, the Committee has not met during FY2007, 2008 and 2009. The most recent reported meeting data are for FY2006 when the Committee met once and expended \$12,500. NARA reports one recommendation issued by this committee during its lifetime. According to its charter, the Committee is to advise the Archivist of the United States on matters relating to the archival, museum, and public programs of the Presidential Libraries operated by the NARA, and advises the Archivist on policies, procedures, programs, objectives, and other matters relating to the effectiveness of the Presidential Library system.

Mr. Chairman, you had also asked me to address the degree to which NARA's advisory committee process gives NARA relevant information it needs to address its decision making. This is difficult to quantify. GSA relies on Executive departments and agencies, like NARA, to provide real-time data during the course of the fiscal year which GSA verifies at the close of the fiscal year. In general, we estimate a committees' value to an agency based on several factors – frequency of meetings, number of recommendations issued (and adopted by the host agency), feedback (if any) to GSA's FACA Desk Officers, and whether, in the case of discretionary committees, the agency renews the committee charter biennially.

As noted above, the Advisory Committee on Electronic Records Archives has been active, holding meetings and expending travel dollars. The Advisory Committee on Presidential Libraries has been less active, having held only one meeting in the past four years. Between them, NARA has only received one recommendation. However, given that NARA has renewed the charters of these two discretionary advisory committees and keeps them active suggests that NARA finds them both to be of value. In this matter, I defer to NARA.

Mr. Chairman, Members of the Committee, this concludes my prepared statement. Thank you again for the opportunity to be here today. I would be pleased to answer any questions.