

FACA Background

- Passed by Congress in 1972 to regulate numerous groups providing advice to the Federal Government
- Congressional oversight (reports, appropriations)
- Provides for public participation
- Codified at 5 U.S.C. App. 2; 41 C.F.R. Part 102-3

Applicability

- Groups established or utilized by the Executive branch for the purpose of obtaining advice or recommendations
- Utilized” means ‘actual management and control’
- Does not apply to:
 - individual advice
 - operational committees
 - inter/intra-governmental committees
 - Exchanges of facts or information

Consequences of a FACA violation

- Good news:
 - No criminal penalties, no fines
- Bad news:
 - Litigation
 - time-consuming
 - future meetings could be prohibited
 - use of the group's past recommendations and/or supporting documents could be prohibited

Requirements

- Advisory functions only
- Establish by law, Presidential authority, or discretionary
- File a Charter containing authority, mission, goals, objectives, and logistics
- Maintain a balanced membership
- Maintain all committee documents for public inspection

Requirements, cont.

- Hold open public meetings
- Allow public to speak or file written statements
- Announce all meetings in the Federal Register – 15 days in advance
- Create and certify detailed public minutes
- Designate an employee of the Federal Government to call and attend each meeting
- Terminate according to statute, when purpose completed, or after 2 years (unless renewed)

Subcommittees

- Defined as groups reporting to full advisory committee; may include non-committee members
- Do not directly advise the president or any federal agency
- Analogous to staff
- FACA restrictions do not apply (meetings not public, do not have to give notice)
- Permissible *only* when reporting to full committee for its consideration and deliberation

Miscellaneous

- Public availability of FACA Committee and (some) subcommittee records
- Conflict of interest considerations

- Questions?