

Presidential Advisory Commission on Election Integrity Briefing

Federal Advisory Committee Act
Presidential Records Act

July 19, 2017

Overview of Discussion

- What is the Federal Advisory Committee Act (FACA)?
- FACA and Transparency
- Establishment Authorities
- FACA Major Players
- Federal Advisory Committees
- Operational Roles Under FACA
- Commission Meetings Under FACA
- Subcommittees
- Commission Interactions/Transparency
- Commission Records – Presidential Records Act

What is the Federal Advisory Committee Act?

- FACA governs the establishment, operation, and termination of Federal advisory committees within the executive branch
- Provides objective and accessible advice
- Created the Committee Management Secretariat
- Requires that Federal advisory committees advise and recommend, not decide or implement
- Regulations for implementing FACA: 41 CFR Parts 101-6 and 102-3 (2001)

FACA and Transparency

FACA is one of the “Four Pillars of Openness in Government” (or Access) 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]

Establishment Authorities

Sources of Authority	Explanation	Mandated or Agency Choice
Required by Statute	Congress establishes by law, or directs agency or President to establish	Non-Discretionary
Presidential Authority (PACEI Commission)	By Executive Order or other Presidential directive	Non-Discretionary
Authorized by Statute	Congress authorizes, but does not direct agency or President to establish	Discretionary
Agency Authority	Agency chooses to establish under general, organic authority	Discretionary

FACA Major Players

- GSA's Committee Management Secretariat provides oversight and management controls government-wide
- Each agency head must designate a Committee Management Officer (CMO) who is responsible for managing their agency committee management program
- A Designated Federal Officer (DFO) oversees and manages a Federal advisory committee
- FACA legal counsel provides legal advice

Federal Advisory Committees

- Commission = Federal advisory committee
- A Federal advisory committee must have a filed charter before it can meet or conduct any business
- Federal advisory committees are ADVISORY only, and must provide independent advice that is not inappropriately influenced by the appointing authority or any special interest

Operational Roles Under FACA

- Commission Chair
- Commission Members
- DFO
- CMO
- Agency Staff

Commission Meetings Under FACA

- Meetings are open to the public, with limited exceptions; public permitted to file written statements
- Meetings can be closed with advance OGC and agency head approval per exemptions in Government in the Sunshine Act
- All meetings require a 15 day advance notice in *Federal Register*
- The Chair and DFO must be present (the entire meeting)
- Minutes required; other recordkeeping requirements

Subcommittees

- Subcommittee meetings not required to be open to the public
- Require a DFO and Chair attend
- Subcommittees report only to Commission, not to a Federal official or agency
- Subcommittee draft products must be vetted by Commission
- Recordkeeping requirements

Commission Interactions/Transparency

- During public meetings
- Between meetings
- Emails, phone calls, social media
- Public/Press
- Commission website, FACA database

Commission Records - Presidential Records Act (PRA)

- This Commission was created by Executive Order and the records are maintained subject to the Presidential Records Act (PRA).
- Per the PRA, as located at 44 USC 2203(b), “**(b)**Documentary materials produced or received by the President, the President’s staff, or units or individuals in the Executive Office of the President the function of which is to advise or assist the President, shall, to the extent practicable, be categorized as Presidential records or personal records upon their creation or receipt and be filed separately.”
- 44 USC 2207 states that the same provisions of the PRA apply to Vice Presidential records as well.

QUESTIONS?