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"Rummaging in the government's attic"

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[FOIAonline](#)

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February 8, 2017

This is in response to your U.S. General Services Administration (GSA) Freedom of Information Act (FOIA) request (GSA-2017-000330), dated January 6, 2017, in which you requested the following:

“[a] digital/electronic copy of the FACA Course Manual. It is also called the Federal Advisory Committee Act Management Course Manual. I am submitting this request to the GSA by email in accordance with GSA Regulations 41 CFR 105-60.402-1 (see below).

Although we were unable to find the requested documents, we are aware of web references to these documents (in the context of past GSA Federal Advisory Committee Act (FACA) training). Enclosed please find a document we believe is responsive to your request. The enclosure is a copy of the current GSA FACA training.

This completes our action on this request. Should you have any questions concerning this matter, please feel free to contact Ms. Lorelei Kowalski, Director, Committee Management Secretariat at 202-208-6035 or by email at lorelei.kowalski@gsa.gov. You may also contact the GSA FOIA Public Liaison, Ms. Audrey Brooks, at 202-205-5912 or by email at audrey.brooks@gsa.gov for any additional assistance and to discuss any aspect of your FOIA request.

Sincerely,

Travis S. Lewis

FOIA Program Manager

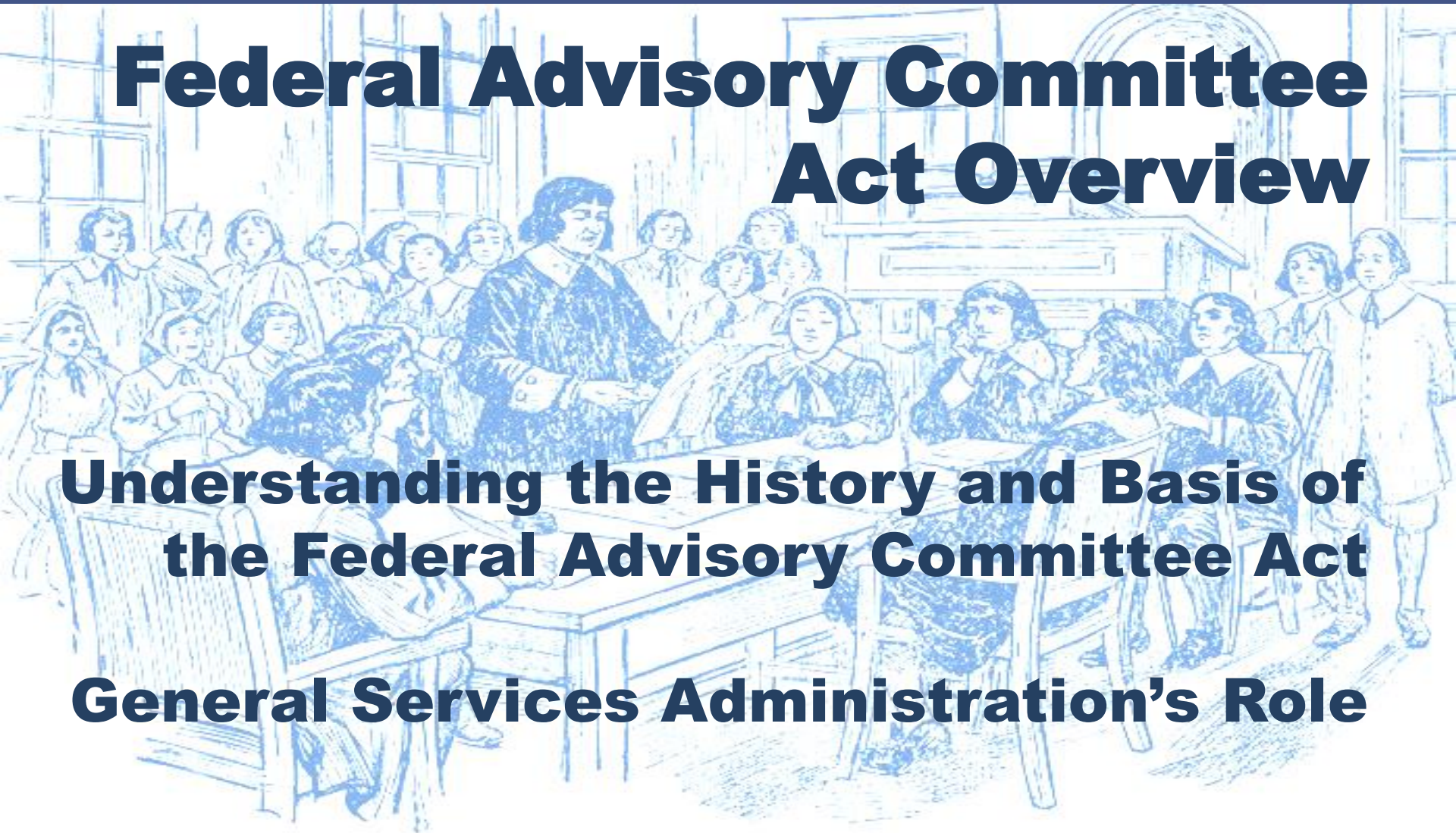
Enclosure



Federal Advisory Committee Act Overview

**Understanding the History and Basis of
the Federal Advisory Committee Act**

General Services Administration's Role



Session Objectives

- ✓ **Impetus for the Federal Advisory Committee Act (FACA)**
- ✓ **FACA**
- ✓ **Selected Statutes/Regulations Influencing FACA Implementation**
- ✓ **The General Services Administration (GSA) Federal Advisory Committee Management Final Rule**
- ✓ **FACA Major Requirements**
- ✓ **FACA Agency/Departmental Resource Team**
- ✓ **What are the benefits of Federal Advisory Committees**
- ✓ **GSA's Role Under FACA**





Impetus for FACA

- Whiskey Rebellion in 1794
- Committees from the 1800s
- Advisory committees were not regulated. Example: Business Advisory Council (established 1933)
 - Approximately one hundred heads of the largest US corporations
 - Meetings at swank resorts
 - Non-fed Council Director paid an annual salary
 - Council members assessed dues
 - Retirement fund for Council Director



Impetus for FACA

- Advisory committee activity increased dramatically after WWII
- A number of attempts were made prior to 1972 to regulate advisory committees. Key examples:
 - 1950's:
 - Department of Justice Guidelines
 - H.R. 7390 to amend the Administrative Expenses Act
 - Bureau of the Budget bulletin "Standards and Procedures for the Utilization of Public Advisory Commissions by Government Departments"
 - 1960's:
 - Executive Order 11007 "Prescribing Regulations for the Formation and use of Advisory Committees"



Impetus for FACA

- House Committee on Government Operations evaluation of the use of advisory committees by the federal government – 1969/1970
 - Special Studies Subcommittee investigation
- Committee report “The Role and Effectiveness of Federal Advisory Committees” (December 1970)



Impetus for FACA

- What the subcommittee investigation uncovered:
 - A need to know what is out there
 - A right to know how public funds are being spent
 - Lack of oversight and management controls
 - Unavailable committee reports
- What they understood was required to effectively manage a group:
 - Constant attention
 - Good management and organization practices
 - Tact and know-how



Impetus for FACA

- What the House Committee understood was important to produce meaningful advice:
 - Committee independence
 - Clear scope of mission
 - Balanced representation
- General House Committee report conclusions:
 - Federal advisory committees are here to stay
 - Legislation was needed



FACA

- H.R. 4383, the Federal Advisory Committee Standards Act, was introduced in February 1971 and implemented many of the Committee report's recommendations
- In May 1972, the House voted overwhelmingly to approve H.R. 4383, and it was passed by the Senate in September 1972
- President Nixon signed the Federal Advisory Committee Act into law (P.L. 92-463) on October 6, 1972



FACA

- Provides objective and accessible advice
- Formalizes process for establishing, operating, overseeing and terminating Federal advisory committees
- Applies only to the Executive Branch
- Creates the Committee Management Secretariat
- Requires that Federal advisory committees advise and recommend, not decide or implement



Selected Statutes/Regulations Influencing FACA Implementation

Government in the Sunshine Act

Public Law 94-409, effective March 12, 1977. Section 5(c) amended Section 10(d) of FACA. Serves as the basis for closing all or part of an advisory committee meeting. **Discussed in Legal and DFO sessions**

Unfunded Mandates Reform Act

Public Law 104-4, effective March 22, 1995. Section 204(b) provides for an exclusion from FACA for interactions between Federal officials and their State, local, or tribal counterparts under certain conditions. **Discussed in Legal session**



Selected Statutes/Regulations Influencing FACA Implementation

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.

GSA Federal Advisory Committee Management – Final Rule

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



GSA Federal Advisory Committee Management Final Rule

- 41 CFR 101-6 and 102-3, July 19, 2001 [66 *FR* 37728-37750]
- Prologue – Explaining the New Regulation
- Subpart A – General Policies
- Subpart B – Establishment, Renewal, Termination
- Subpart C – Management of Advisory Committees
- Subpart D – Meeting and Recordkeeping Procedures
- Subpart E – Applicability of FACA to NAS and NAPA
- Appendices or Tables to Each Subpart, with Questions and Best Guidance



FACA Major Requirements

- Agencies must establish uniform administrative guidelines and management controls that are consistent with FACA and the GSA Rule (Discussed in CMO session)
- Agencies must maintain systematic information on the nature, functions, and operations of their advisory committees “for the duration of the advisory committee” (Discussed in Record Keeping and FACA Database sessions)
- Agency heads must designate Committee Management Officers (CMOs) who are responsible for managing their agency committee management program (Discussed in CMO session)



FACA Major Requirements

- Designated Federal Officers (DFOs) oversee and manage the federal advisory committee (Discussed in DFO session)
- Committees must be chartered before they can meet or conduct any business (Discussed in CMO session)
- Advisory committee membership is to be fairly balanced (Discussed in Legal and DFO sessions)
- Federal advisory committees are to provide independent advice that is not inappropriately influenced by the appointing authority or any special interest (Discussed in DFO session)



FACA Major Requirements

- Advisory committee meetings are required to be open to the public, with limited exceptions (Discussed in Legal and DFO session)
- All advisory committee documents must be available to the public, with limited exceptions (Discussed in Legal and DFO session)
- Advisory committees will be terminated as soon as:
 - Objectives have been accomplished
 - Work has become obsolete
 - Cost exceeds benefits(Discussed in CMO session)



FACA Agency/Departmental Resource Team

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



FACA

What are the Benefits of Federal Advisory Committees?

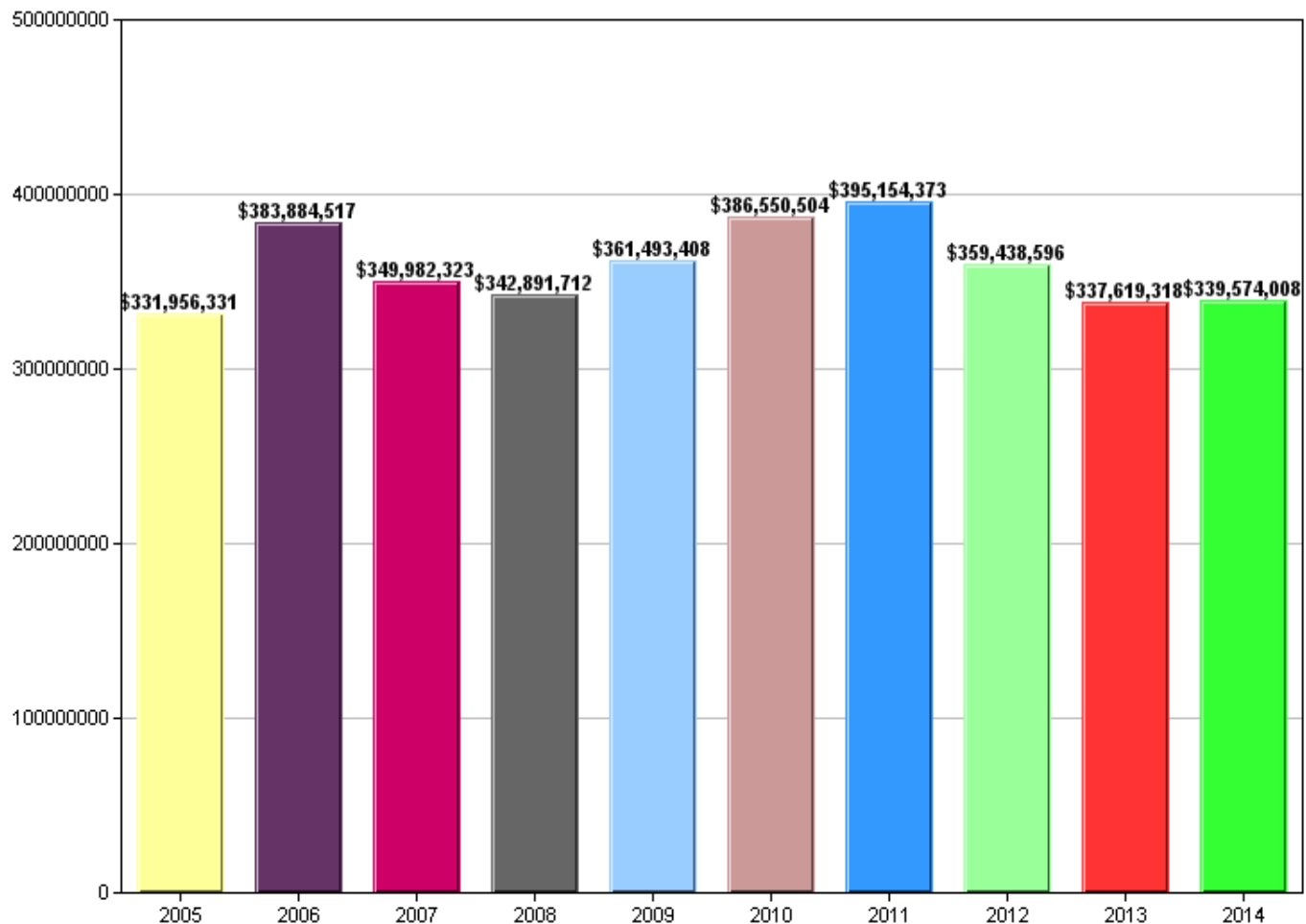
- Transparency and [participation](#) improves citizen trust in government
- Actions based on committee advice can be easier to implement
- [FACA requirements](#) render [advice](#) from federal advisory committees credible



FACA Footprint

Program Total Value FY 2005-2015

Spending on Advisory Committees - All Agencies



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FACA Footprint

Fiscal Year 2014 Cost and Activity

Federal Advisory Committee Costs:

- \$339.5 million in total expenditures
- 57% of that cost is for Federal staff support
- 15% of the total is for travel and per diem

Federal Advisory Committee Activity:

- 1050 Committees in existence
- Approximately 67,900 Committee and Subcommittee members
- 52 Executive Departments and Agencies
- 43 Committees directly advise the President
- Approximately 7,200 meetings held
- Just under 700 reports issued



GSA's Role Under FACA

- Under Section 7 of the Act, GSA
 - prepares regulations on Federal advisory committees
 - issues other administrative guidelines and management controls for advisory committees
 - assists other agencies in implementing and interpreting the Act
- The GSA Administrator has delegated responsibility for these activities to the Committee Management Secretariat



GSA's Role Under FACA

Internal/External Program Roles





GSA's Role Under FACA

What Does GSA Do For You?

- Prepares the regulations to implement FACA
- Issues guidance
- **Assists agencies to implement/interpret FACA** (Desk Officers)
- Coordinates CMO and Attorney Councils
- Provides governmentwide training
- Maintains a governmentwide FACA database
- **Conducts the Annual Comprehensive Review**



GSA's Role Under FACA

What Does GSA Do For You?

- Assists agency CMOs to implement/interpret FACA (Desk Officers)
 - Every agency is assigned a GSA Desk Officer
 - Desk Officers assist in establishing/renewing/terminating FACs
 - Desk Officers assist CMOs in addressing FACA operational and management issues
- Conducts the Annual Comprehensive Review
 - GSA annually initiates the review of data and sets the review standards
 - GSA partners with CMOs to ensure complete and accurate information
 - GSA closes out the ACR when all reviews are completed



GSA Resources

- GSA website: www.gsa.gov/faca
 - Overview
 - Advice and Guidance
 - Legislation and Regulations
 - Performance Measurement
 - Links to the FACA Database and eFACA



Summary and Key Points

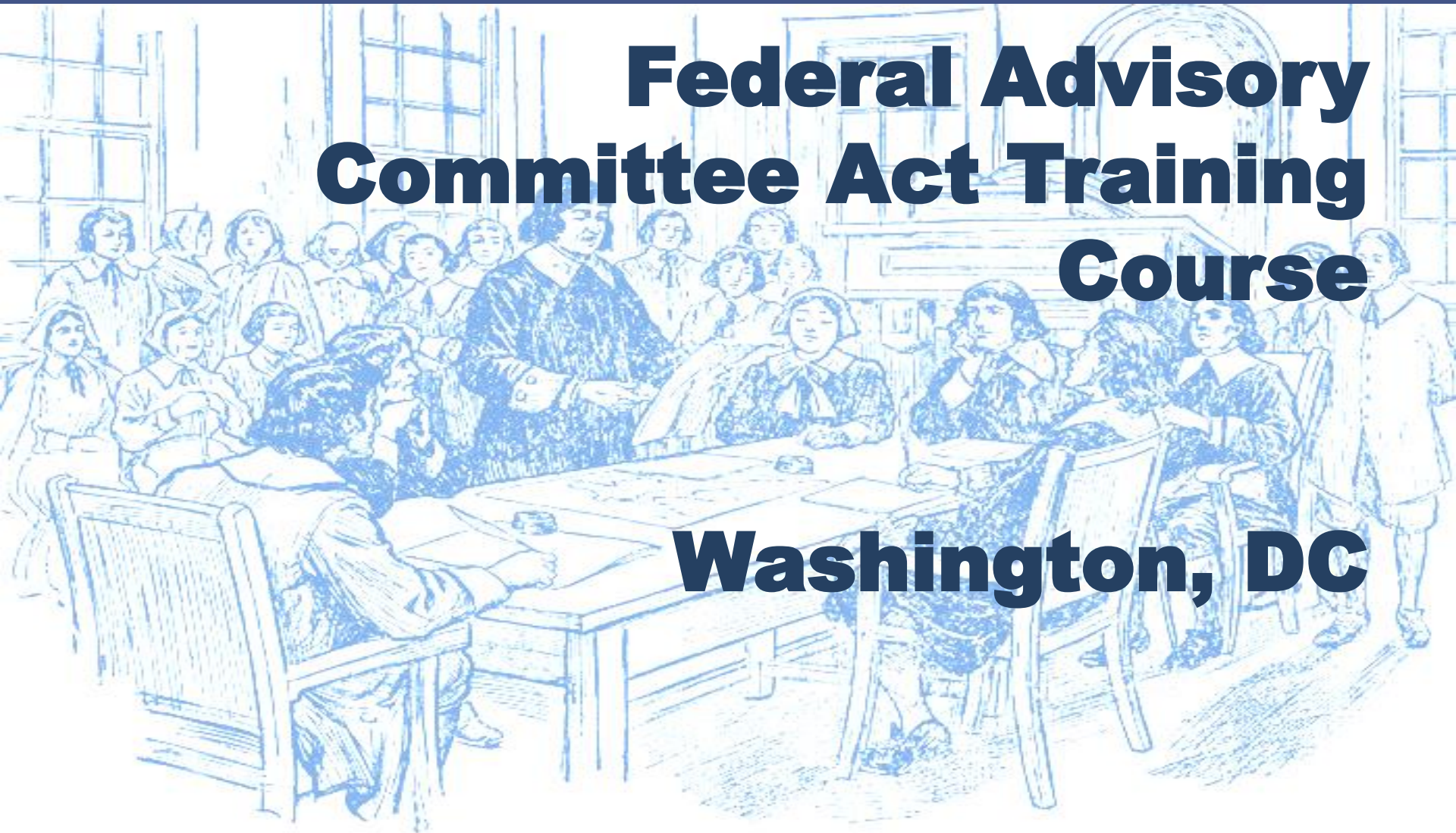
- The language in the FACA statute is very deliberate
- Government-wide - a lot of committees and members
- Other laws affect FACA implementation
- Major FACA requirements are discussed in this course
- Get to know your agency's FACA team
- GSA works closely with your CMOs
- GSA websites are a resource



U.S. General Services Administration

Federal Advisory Committee Act Training Course

Washington, DC



Legal Framework for Advisory Committees



Session Objectives

- ✓ The legal context of the Federal Advisory Committee Act (FACA)
- ✓ The legal definition of “Federal advisory committee” (FAC)
- ✓ Groups not subject to FACA
- ✓ Significant legal requirements for FACs
- ✓ Gov 2.0/Social Media





The Legal Context of FACA

What do you need to know?



So You'd Like to Obtain Advice...

When you set up an advisory committee, you may need legal advice in several areas:

- **FACA**
- **Appropriations Act**
- **Anti-Lobbying Act**
- **Ethics law**
- **Records management statutes (such as the Federal Records Act, FOIA, and the Privacy Act)**
- **Employment law**



Consequences of a FACA Violation

Good News:

- 😊 No criminal penalties
- 😊 No civil money penalties



Bad News:



Litigation

- Time-consuming
- Meetings could be prohibited
- Use of group's advice and/or supporting documents could be prohibited



CASE STUDY:

Alabama –Tombigbee Rivers Coalition v. Dept. of Interior





When Does FACA Apply?

**DETERMINING WHETHER A GROUP
MUST BE CHARTERED UNDER
FACA**



What Is An Advisory Committee?

The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes

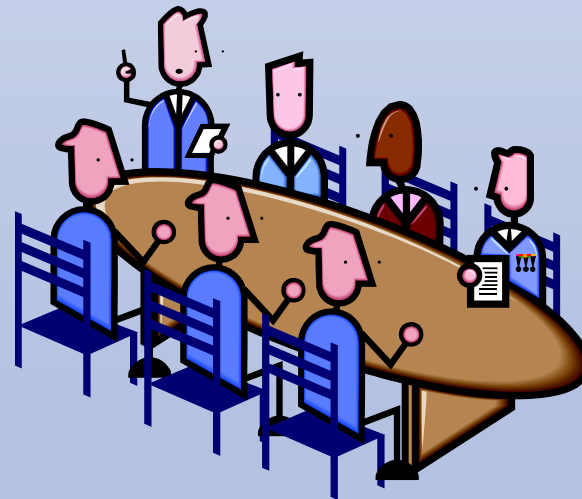
- (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and
- (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.



What's In A Name?

The term "advisory committee" means any:

committee,
board,
commission,
council,
conference,
panel,
task force,
other similar group, or
any subcommittee or subgroup thereof





Does It Matter Who Forms The Committee?

- (A) established by statute or reorganization plan;**
- (B) established or utilized by the President; or**
- (C) established or utilized by one or more federal agencies**





What Does “Established Or Utilized” Mean?

Established

Actually formed

Utilized

Subject to strict management and control by the federal government (for example: selection of members, setting of agenda, providing direct funding)



Does It Matter Who Gets the Advice?

- **“...in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government”**
- **FACA only applies when the advice is for the Executive Branch**
- **Groups developing advice for other entities are not subject to FACA**



Groups Not Subject To FACA

When does FACA not apply?



Groups Not Subject To FACA

- 1. Composed wholly of full-time or permanent part-time officers or employees of the Federal Government**
- 2. In which each person provides individual advice; there is no collective advice**
- 3. Information exchange/fact gathering**
- 4. Meetings initiated by a group to express their views**



Groups Not Subject To FACA

5. UMRA Section 204 Exception

Does not apply to actions in support of intergovernmental communications where--

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.



CASE STUDY: Wyoming Sawmills v. USFS



Medicine Wheel



Other Groups Not Subject To FACA

- 6. Established, managed, and controlled by a non-federal entity**
- 7. Exempt by statute**
- 8. Operational committees**
 - Any committee established to perform primarily operational as opposed to advisory functions**
 - Making or implementing government decisions or policy**



Other Groups Not Subject To FACA

- 9. Created by the National Academy of Sciences or the National Academy of Public Administration**
- 10. Created by the CIA or Federal Reserve System**
- 11. Local civic groups whose primary function is rendering a public service with respect to a federal program**
- 12. State or local groups established to advise state or local officials or agencies**



Summary

When Does FACA Apply?

1. Is there a group?
2. Does the group provide collective advice?
3. Who does the group advise?
4. Who are the group's members?
5. Who established the group?
6. Who manages and controls the group's activities?
7. Does an exception apply?



FACA Legal Requirements

SIGNIFICANT LEGAL REQUIREMENTS FOR FEDERAL ADVISORY COMMITTEES



General Legal Requirements

- **Develop and file a charter**
- **Appoint members**
- **Maintain a balanced membership**
- **Hold open public meetings; may close only in limited circumstances**
- **Allow the public to file written statements and have an equal opportunity to speak**
- **Announce all meetings in the Federal Register (timely)**
- **Maintain all committee documents for public inspection**
- **Terminates after 2 years if not renewed**
- **Providing advice is the sole function of a FAC**



Balanced Membership

FACA § 5(c)

- **Points of view for the function to be performed**
- **Numerical parity of holders of various points of view not required**
- **Separate from considerations of race, gender, geographic region, etc.**
- **No individual or group has the right to be on a committee**



Subcommittees

- **Smaller groups that report to a chartered FAC**
- **Agency must approve creation and operation**
- **May not directly advise the president or any federal agency**
- **Chartered committee may not merely rubber stamp the recommendation of the subcommittee (41 CFR § 102-3.145), but must fully discuss and deliberate before adopting**
- **Not subject to FACA openness requirements, unless your agency makes a policy decision to have them do so**



Subcommittees

Legal Risk

- If a subcommittee reports directly to the agency, it will be subject to all FACA requirements
- This may expose both the subcommittee and committee to legal challenge and the agency to litigation.





Open FACA Meetings

FACA § 10(a)(1)

- Reasonably accessible to the public, including the disabled
- Includes meetings held by teleconference, videoconference, the Internet, or other electronic medium





Closed FACA Meetings

- May be closed under one of the ten bases stated in the Government in the Sunshine Act at 5 USC 552b(c)
- Disclosure must be “likely to” involve specified matters, e.g. classified matters, matters exempt from disclosure by statute, or confidential commercial information
 - Many bases parallel FOIA exemptions, but deliberative process exemption not included
- Many advance requirements, including General Counsel review and certification, written agency determination, and publicly available closure determination
- Annual report to Congress on how many meetings closed and why



Activities Not Required to be Open

➤ **Administrative activities**

Gatherings solely to discuss administrative matters or to receive administrative information from a federal officer or agency (41 CFR § 102-3.160(a))

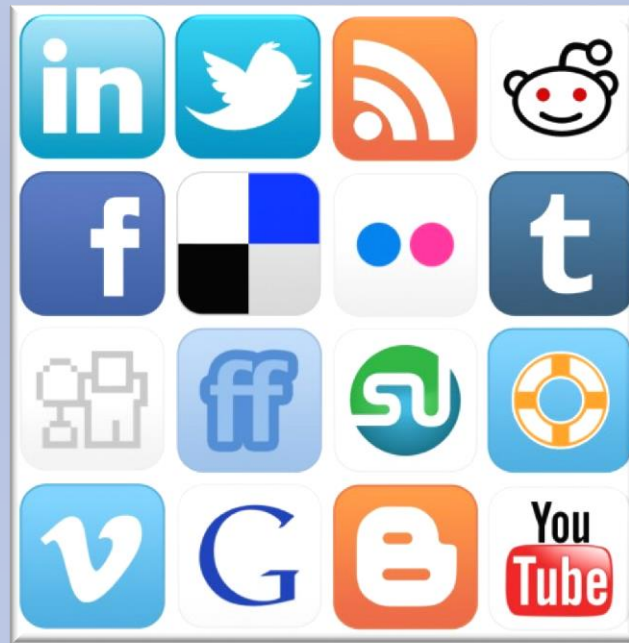
➤ **Preparatory work**

Gatherings solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the FAC or to draft position papers for deliberation by the FAC (work groups) (41 CFR § 102-3.160(b))



Gov 2.0/ Social Media

- Emerging issue; new technology
- FACA and other laws still apply
- Consult CMO, your agency lawyers, and agency records officers





Committee Documents

- For FOIA and discovery purposes, privilege generally does not apply to committee documents.
- The agency does not lose the deliberative process privilege by sharing privileged documents with the FAC.
- Always be aware there are two applicable record requirements:
 - 1) FACA § 10(b)
 - 2) Presidential and Federal Records Acts



Summary And Key Points To Remember

- **These are only some of the significant legal issues that may arise as you work with your federal advisory committee**
- **Many other issues may arise, be sure to consult your agency FACA lawyer early and often**



References

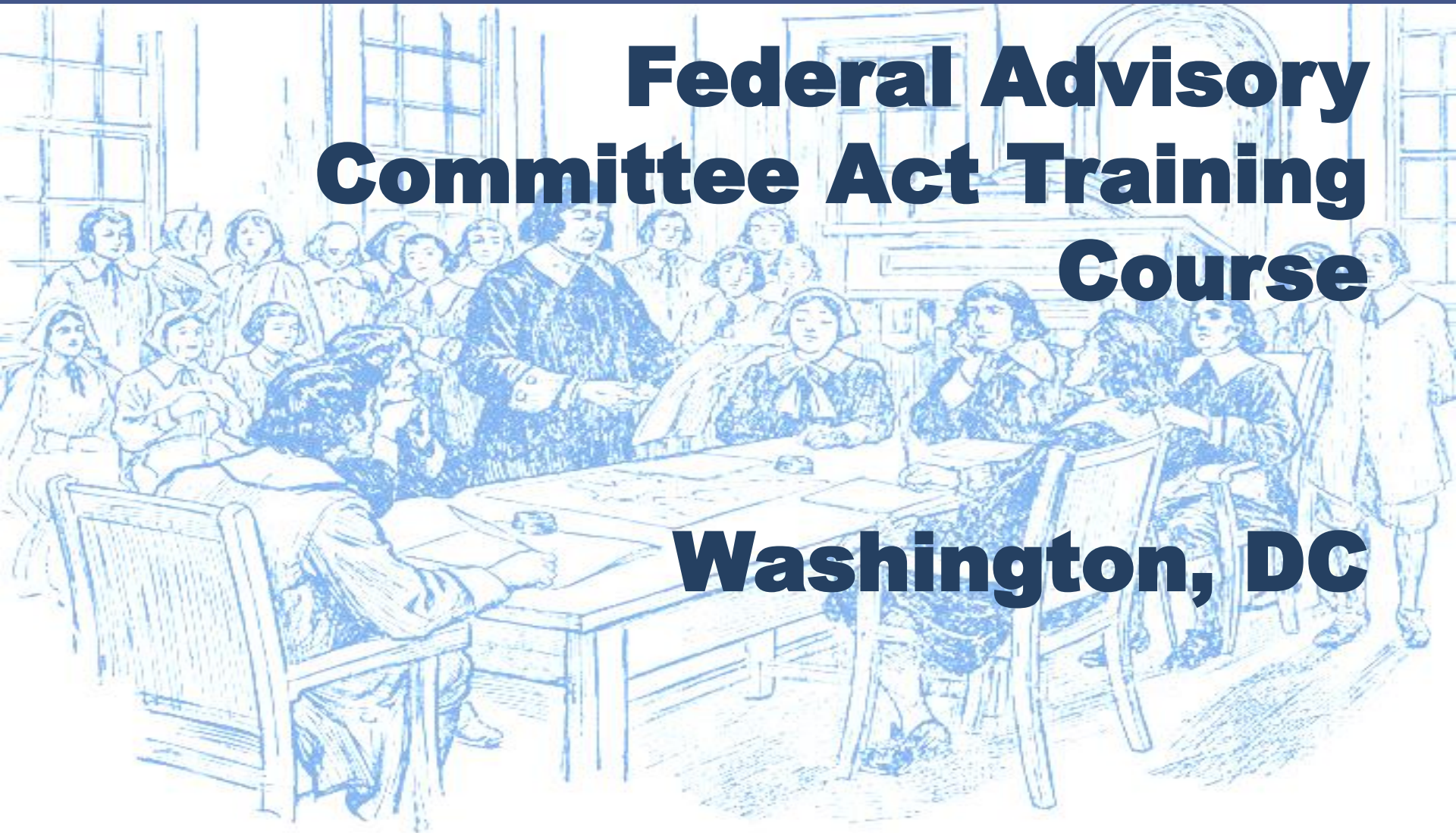
- **Federal Advisory Committee Act, 5 U.S.C. App. 2**
- **General Services Administration Federal Advisory Committee Management Regulation, 41 C.F.R. Part 102-3**
- **Unfunded Mandates Reform Act, 2 U.S.C. § 1534**
- **Government in the Sunshine Act, 5 U.S.C. § 552b(c)**
- **Negotiated Rulemaking Act, 5 U.S.C § § 561-570**
- **FACA Case Digest - GSA FACA Database**
<http://www.fido.gov/facadatabase/>



U.S. General Services Administration

Federal Advisory Committee Act Training Course

Washington, DC

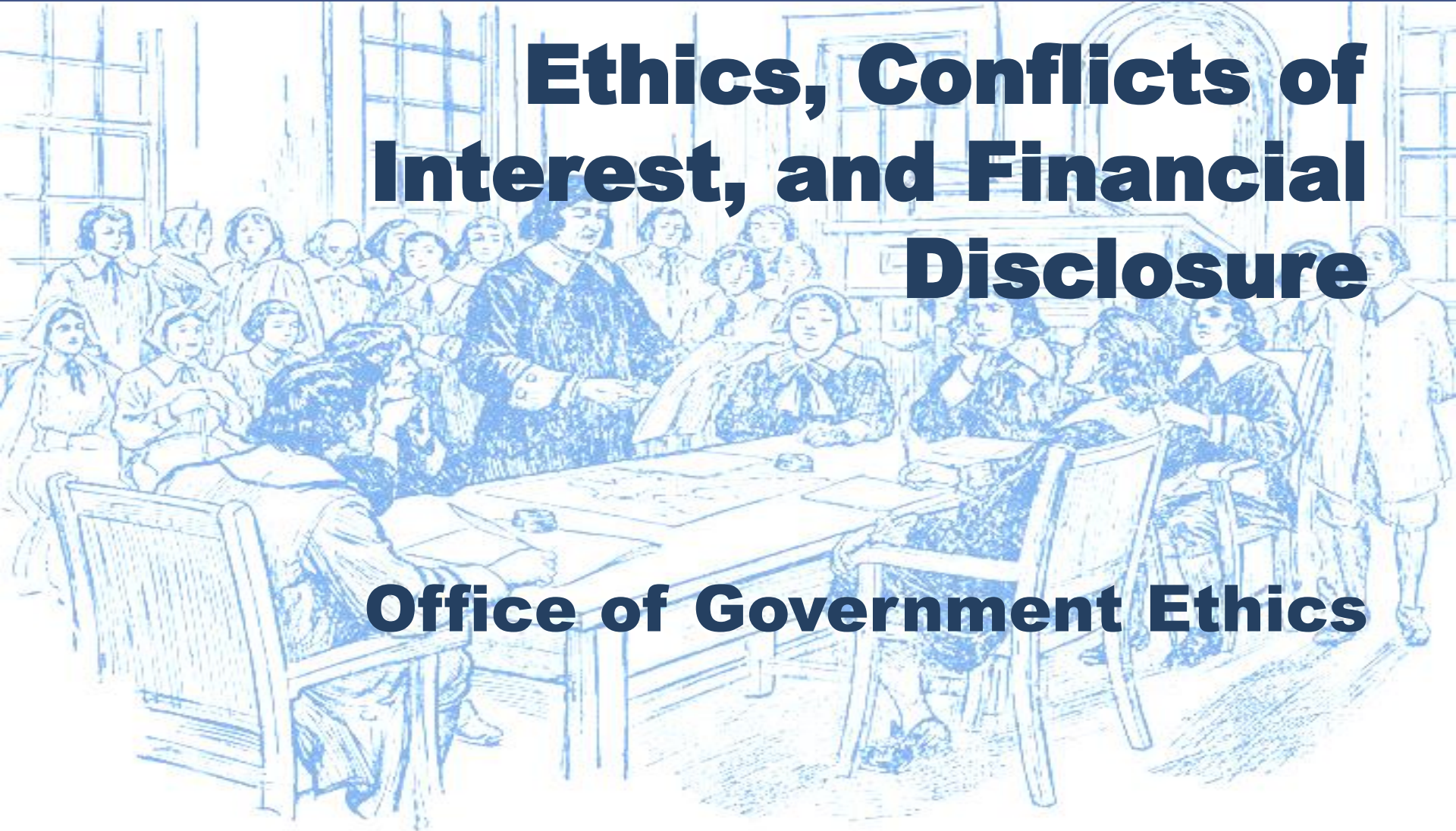




U.S. General Services Administration

Ethics, Conflicts of Interest, and Financial Disclosure

Office of Government Ethics



Session Objectives

- ✓ What ethics rules apply to committee members?
- ✓ Is your member a Special Government Employee (SGE) or a “Representative”?
- ✓ What “conflict of interest” laws apply to members?
- ✓ Do the standards of ethical conduct apply to members?
- ✓ Are members subject to any financial disclosure requirements?
- ✓ Will we take a quiz today?





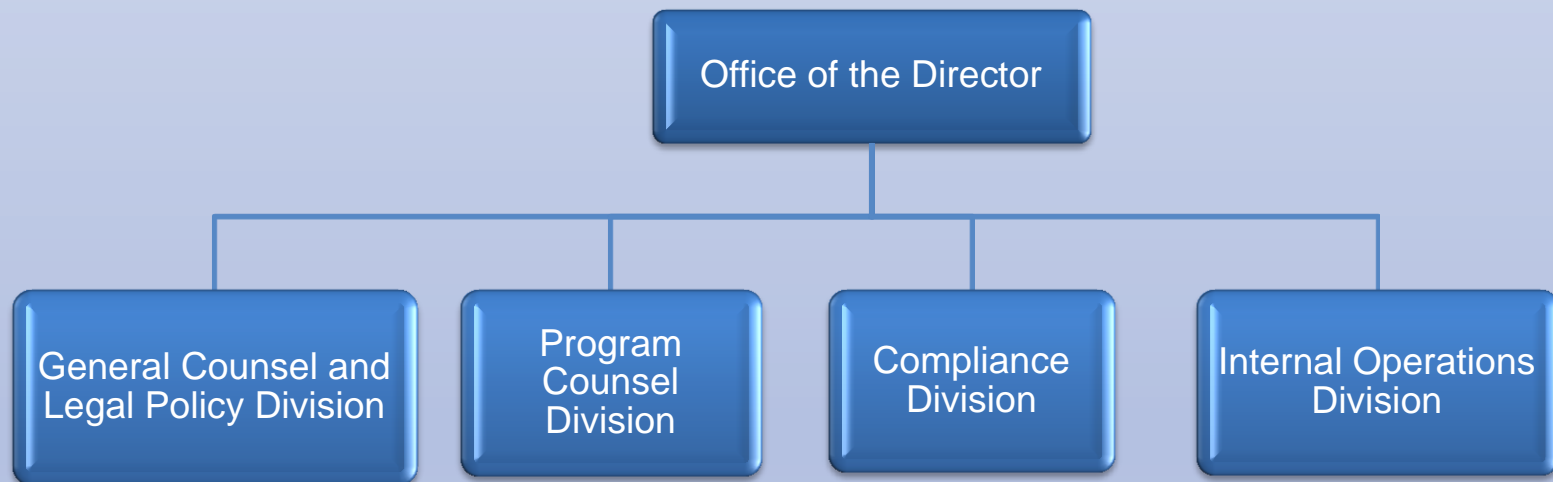
Why is ethics important?

- **Committee end product**
- **Employee consequences**
- **Program reviews/audit**
- **Federal Advisory Committee Act (FACA) responsibility**
- **Prosecution/litigation/personnel actions**



OGE Organization Chart

(For training purposes only)





Who Can Help with Ethics Issues?

The “Big Picture”



OGE
<80

Oversight

Advice

Training

4,500

Ethics
Officials

Working in over
130 Agencies

Oversight

Advice

Training

2,700,000

Civilian
Personnel

380,000 Confidential
Report Filers

26,000 Public Report
Filers



Committee Members

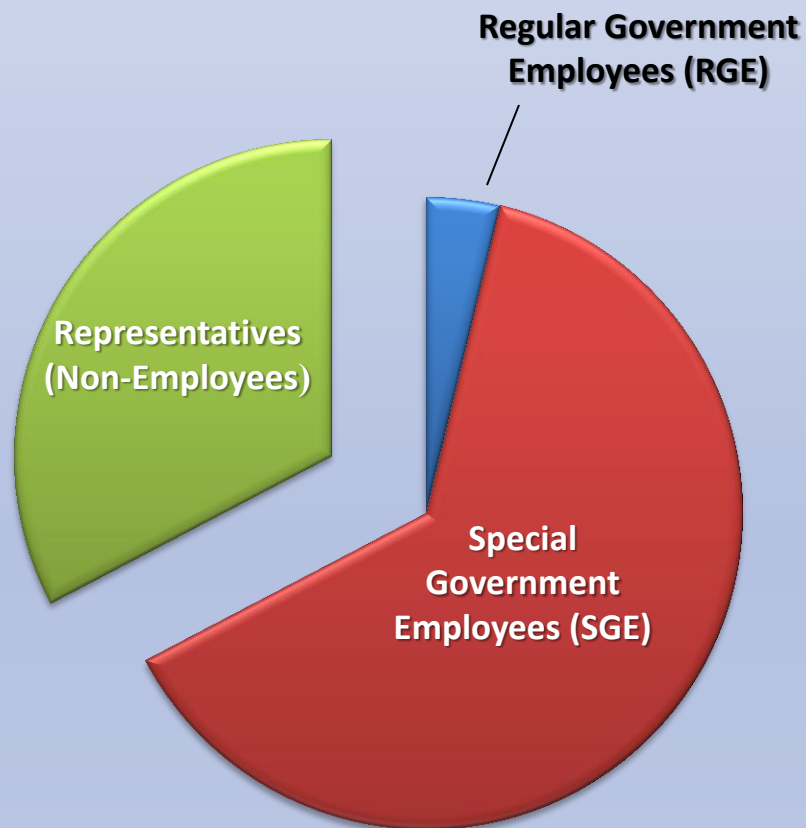
Member Status:

- ***Regular Government Employee***
- ***Special Government Employee***
- ***Representative/Non-Employee***





Member Status





Ethics Sources

Federal Laws

- **Ethics in Government Act of 1978**
- **Ethics Reform Act of 1989**
- **“Conflict of Interest” Statutes**
- **Foreign Gifts Act, Procurement Integrity Act, etc.**
- **The Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act)**

Executive Orders

- **Executive Order 12674**
- **Executive Order 12731**
- **Executive Order 13490**



Conflicts of Interest Statutes

<i>Subject Area</i>	<i>Citations</i>
Representational Restrictions - compensated	18 U.S.C. 203
Representational Restrictions - uncompensated	18 U.S.C. 205
Post Employment Restrictions	18 U.S.C. 207
Personal & Imputed Financial Interests	18 U.S.C. 208
Supplementation of Government Salary	18 U.S.C. 209



Ethics Sources - Rules

Subject Area	Citations
<i>Financial Disclosure</i>	<i>5 C.F. R. Part 2634</i>
<i>Standards of Conduct</i>	<i>5 C.F.R. Part 2635</i>
<i>Earned Income Limits</i>	<i>5 C.F.R. Part 2636</i>
<i>Post Employment</i>	<i>5 C.F.R. Part 2637 & 2641</i>
<i>Ethics Program</i>	<i>5 C.F.R. Part 2638</i>
<i>Financial Interests</i>	<i>5 C.F.R. Part 2640</i>
<i>Agency Supplementals</i>	<i>Various Provisions</i>



Ethics Resources

Other Resources:

- OGE Opinions
- OGE Advisories
- Department of Justice Opinions
- Access to these materials on OGE's website





Ethics Resources

Open Government

Resources For: General Public International Media [Forms Library](#)

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

Preventing Conflicts of Interest
in the Executive Branch

SEARCH

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TOPICS

- Financial Conflicts of Interest & Impartiality
- Gifts & Payments
- Use of Government Position & Resources
- Outside Employment & Activities
- Post-Government Employment
- Selected Employee Categories**
 - Political Appointees
 - Advisory Committee Members**
 - Detailees
 - Special Government Employees
- Enforcement

Advisory Committee Members

In 1992, Congress passed the Federal Advisory Committee Act (FACA), codified at 5 U.S.C. app. 2 [§](#), to provide an orderly procedure for Federal agencies to use in seeking the advice, assistance, and input of persons outside the Government. FACA governs how advisory committees are established, operated, and terminated.

Advisory committee members come from both the public and private sectors and play a role in shaping important public policy on difficult issues facing Government decision makers. The General Services Administration publishes regulatory guidance concerning the management of FACA committees, at 41 C.F.R. part 102-3 [§](#). Among other things, that regulation requires agency heads to ensure that the interests and affiliations of members serving on committees are in conformance with ethics provisions.

Although any executive branch employee and even an independent contractor may serve as a member of an advisory committee, most members of advisory committees fall into one of two categories:

- ◆ **Special Government Employees.** A [special Government employee](#) (SGE) is a Government employee. More specifically, an SGE is an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 days. Individuals who serve on advisory committees as SGEs are appointed to a committee to exercise their own individual best judgment on behalf of the Government. It is expected that SGEs will discuss and deliberate in a manner that is free from conflicts of interest.
- ◆ **Representatives.** A representative is not a Government employee. Individuals who serve on advisory committees as representatives are appointed to a committee to provide it with the points of view of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.). It is expected that representatives will represent a particular bias.

Executive branch ethics provisions apply to SGEs (and "regular" employees) who serve as committee members, but do not apply to committee members who serve as

Share

Laws & Regulations

Federal Register Issuances:

Legal Advisories & Opinions

[Legal Advisories](#)

[Judicial Opinions](#)

[DOJ Office of Legal Counsel Opinions](#)

Education Resources

[Conflicts of Interest and Government Employment](#)

[To Serve With Honor: A Guide on the Ethics Rules that Apply to Advisory Committee Members Serving as Special Government Employees \(2008\)](#)

[To Serve With Honor: A Guide on the Ethics Rules that Apply to Advisory Committee Members](#)



Who Is a Government Employee?

A person is an employee of the U.S. Government if he/she is an officer or an individual who is:

- **appointed** by a Federal officer or employee; and
- engaged in the performance of a Federal **function** under law or an executive act; and
- subject to the **supervision** of a Federal officer or employee while engaged in the performance of the duties of his/her position.

Reference: Title 5, United States Code, Section 2105.



Who is a Special Government Employee?

An officer or **employee** of the Executive or Legislative Branch of the U.S Government –

- retained, designated, appointed, or employed to perform, **with or without compensation**
- **temporary duties**, either on a full-time or intermittent basis
- for not more than **130 days** during any period of 365 consecutive days

Reference: Title 18, United States Code, Section 202.



Representatives

Who is a representative?

- *A representative is not an employee.*
- They are appointed for the sole purpose of obtaining the ***points of view of or perspectives of outside interest groups or stakeholders*** (e.g., labor unions, consumers, an industry sector, or other recognizable group of persons interested in committee matters).
- They may have expertise in a specific area, discipline or subject matter, but they are not appointed to provide independent advice (i.e., disinterested or impartial advice) in committee matters.



Representatives - Examples





Representatives

Status -- Determination Factors

If a member's status is not specifically identified (e.g., by a committee's enabling statute or other documents), then agency must look to several factors –

- (1) Does the member receive any compensation?
- (2) Is the member appointed based upon the recommendation of some outside group or organization?
- (3) Does the member have the authority to bind outside organizations?
- (4) Does the member act as a spokesperson for the United States or a Government agency regarding committee matters?



Committee Members

Some Common Designation Missteps:

- Concluding that the sole use of the word “representative” (or some form of it) automatically ends the status inquiry
- Assuming that the use of outside recommendations for members alone is sufficient to determine a member’s status (this factor “tends to support” such a conclusion; factor is not by itself conclusive of a member’s status)
- Appointing members as representatives solely to avoid subjecting them to ethics rules, while actually using the members as SGEs



Committee Members

Some Best Practices:

- ***Talk to your ethics officials regularly*** during both the committee formation process and when ethics issues arise during the committee's existence.
- Ensure committee documents ***state clearly a member's status*** (e.g., in an appointment letter).
- Properly ***inform members of their role*** on the committee (e.g., *SGEs provide independent advice based on their expertise while representatives provide the views of stakeholders only*).
- ***Review relevant OGE DAEOgrams 04-022, 05-012, & 07-002.***



Conflicts of Interest Statutes

<i>Subject Area</i>	<i>Citations</i>
Representational Restrictions - compensated	18 U.S.C. 203
Representational Restrictions - uncompensated	18 U.S.C. 205
Post Employment Restrictions	18 U.S.C. 207
Personal & Imputed Financial Interests	18 U.S.C. 208
Supplementation of Government Salary	18 U.S.C. 209



Conflicting Financial Interests

Title 18, United States Code, Section 208

- What does this law prohibit?
- Can members act in matters affecting their financial interest?
- What is a **recusal**?
- Does the law provide for any **waivers**?
- Are there any **exemptions** that allow members to participate in a government matter?
- How else can a member resolve a conflict of interest ?



Standards of Ethical Conduct

- **Regulatory Background – How long have the Standards been in effect?**
- **How do these Standards apply to members?**
- **How are the Standards organized?**
 - ☐ **Basic Principles of Ethical Conduct**
 - ☐ **Specific Provisions (Subparts A-I)**



Reference: Title 5, Code of Federal Regulations, Part 2635



Standards of Ethical Conduct

Specific Provisions

- Gifts from outside sources
- Misuse of position
 - ☐ Use of Public Office for Private Gain
 - ☐ Use of Nonpublic Information
 - ☐ Use of Government Property
 - ☐ Use of Official Time





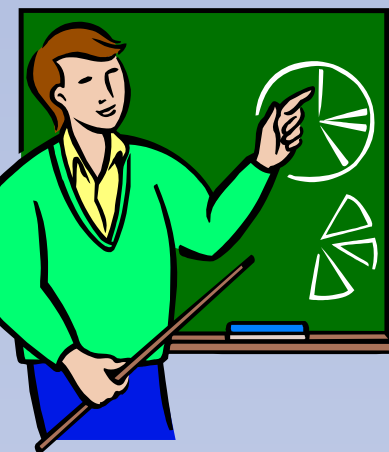
Standards of Ethical Conduct

■ Outside Activities

- ☐ Teaching, Speaking, and Writing
- ☐ Fundraising Activities
- ☐ Service as an Expert Witness



*Note: The rules above apply **less restrictively** to SGEs.*





Gifts Rule

What is the general rule?

Government employees (including members) may not accept **gifts**, directly or indirectly, from **prohibited sources** or given because of an employee's official position.



Gift Defined

What is a gift?

- ☐ In general, a gift is **anything** of monetary value.
- ☐ A gift **includes** gratuities, favors, discounts, entertainment, hospitality, loans, forbearance, services, training, transportation, travel, meals, and lodging.
- ☐ Some items are **excluded** from the definition of a gift (i.e., coffee, donuts, etc.). See 5 C.F.R. 2635.203(b).



Gift – Prohibited Sources

Prohibited sources are persons (or an organization made of such persons) who

- (1) are seeking official action by the employee's agency,
- (2) are doing or seeking to do business with the employee's agency,
- (3) are regulated by the employee's agency, or
- (4) have interests that may be substantially affected by the performance or nonperformance of the employee's official duties.



Gift Exceptions

There are also a number of **exceptions** to the ban on gifts from outside sources to include situations:

- ☐ where the value of the gift is **\$20 or less** (there is a monetary cap per source per year)
- ☐ where the gift is based solely on a **family relationship** or **personal friendship**
- ☐ where the gift is based on an **outside business** or **employment relationship**

Reference: Title 5, Code of Federal Regulations, Section 2635.204.



Teaching, Speaking or Writing

Employees **may not receive compensation** for teaching, speaking or writing, if:

- ☐ it's part of their official duties
- ☐ they are invited because of their official position or the invitation is from a prohibited source
- ☐ activity draws on non-public information
- ☐ subject deals with matter they were assigned to now or during previous 1-year period, or
- ☐ subject deals with any announced or ongoing policy, program or operation of the agency



Teaching, Speaking or Writing

Notes:

What is considered **“related to official duties”** is narrower for SGEs.

- ☐ For noncareer employees, “related to official duties” includes the general subject matter, area, industry, or economic sector affected by the programs or operations of their agencies.
- ☐ Restriction does not apply to teaching a course requiring multiple presentations at an elementary/secondary school or college.



Fundraising

- ☐ Employees may engage in fundraising in their **official capacity** if in accordance with a statute, Executive order, or otherwise as determined by the agency.
- ☐ Employees may engage in fundraising in their **personal capacity** if they do not solicit funds from a subordinate or from “prohibited source” and they do not use their official title, position, or authority.
- ☐ The definition of “prohibited source” is **narrower** for SGEs.

Reference: 5 C.F.R. Section 2635.808.



Expert Witness Testimony

- ❑ In general, employees may not serve, other than on behalf of the U.S., as an **expert witness**, with or without compensation, in any proceeding
 - before a court or agency of the U.S.
 - in which the U.S. is a party or has a direct and substantial interest unless participation is authorized as being in the interest of the government or unrelated to their official duties.
- ❑ Employees are not prohibited from serving as **fact witnesses** when subpoenaed by appropriate authorities.

Reference: 5 C.F.R. Section 2635.805.



Expert Witness Testimony

Substantially Narrowed Restriction for Most SGEs:

Applies only where the *SGE actually participated* officially in the same proceeding or in the particular matter that is the subject of the proceeding

Even More Narrow Restriction for a Limited Class of SGEs:

- SGEs Appointed by the President or
- Serving on a statutory commission or
- SGE that has or is expected to serve more than 60 days in a 365 consecutive day period

SGEs shall not serve as an expert witness in any proceeding before a court or agency of the U.S., if the SGE's *employing agency* is a party or has a direct or substantial interest in the matter, unless participation is authorized.



Financial Disclosure

- What is the purpose of financial disclosure?
- What type of financial disclosure reports must members file?

Confidential Disclosure Report
(*OGE Form 450*)

Public Disclosure Report
(*OGE Form 278, 278e*)



- Are representatives required to file reports?



OGE FORM 450, Assets & Income

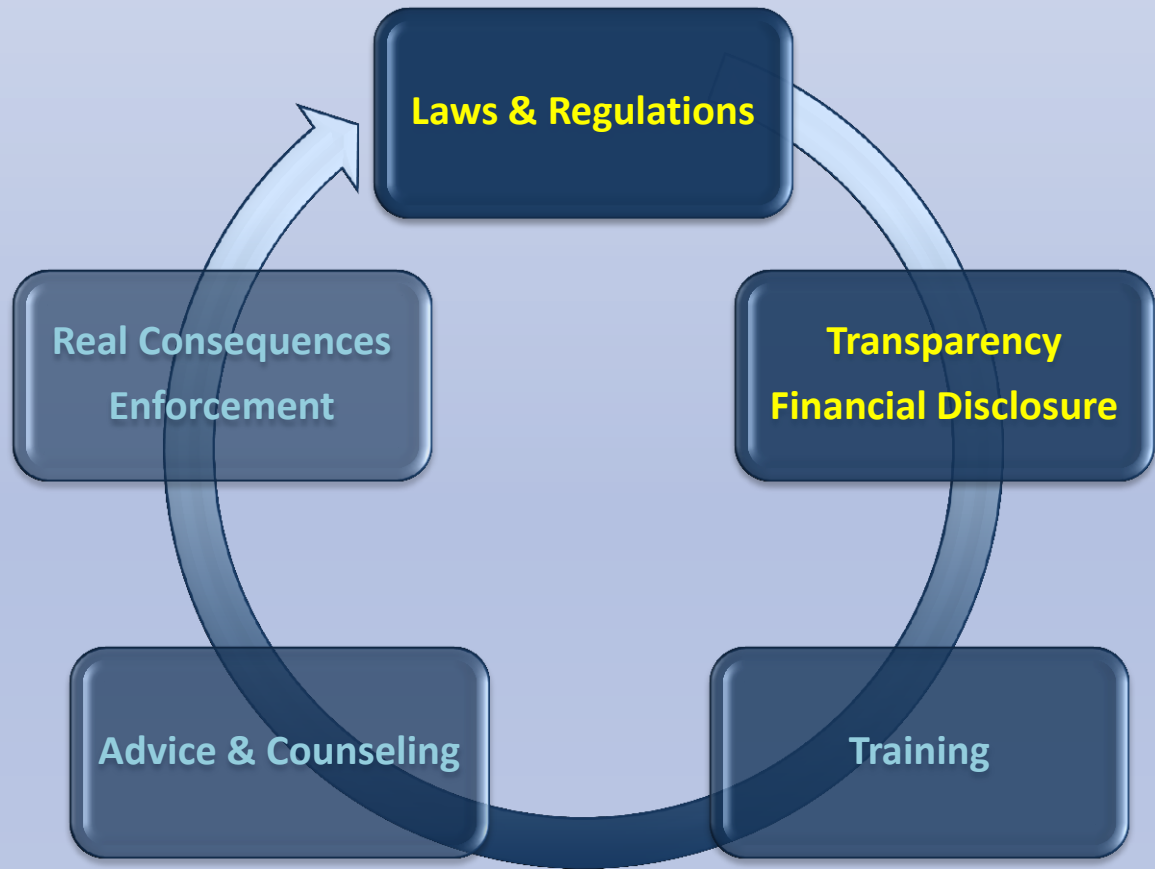
Part I: Assets and Income

Continuation Page

Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.) You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.	No longer held
¹ University of Southern California (USC) - salary	<input type="checkbox"/>
² (S) Americans for Energy Independence (AEI) - salary	<input type="checkbox"/>
³ Vanguard Energy Investment Fund - mutual fund	<input type="checkbox"/>
⁴ Wind Works Power Corp. - stock	<input type="checkbox"/>
⁵ Constellation Energy Corp. - consultant fees	<input checked="" type="checkbox"/>
⁶ Google - stock	<input type="checkbox"/>
⁷ IRA: General Electric, CocaCola, Citigroup, 3M - stocks	<input type="checkbox"/>
⁸ (S) 401k: TRowe Price Telecommunications Fund	<input type="checkbox"/>
⁹ Sierra Club - honorarium (magazine article)	<input type="checkbox"/>



Ethics Program Components





Final Thoughts.

To Serve With Honor

A Guide on the Ethics Rules
That Apply to Advisory Committee
Members Serving as Special
Government Employees



U.S. Office of Government Ethics
www.usoge.gov
March 2008

12

SGE Game Plan for Peak Ethical Performance

- 1 Don't ever begin your committee work until you know what your role or status is on a committee.
- 2 Always get an "ethics checkup" before you begin your committee work.
- 3 Don't work on a committee matter that will affect your financial interests, unless some exception allows you to do so.
- 4 Always check with an ethics official if you have any concerns about an appearance of a conflict of interest.
- 5 Improve "your game" by becoming more familiar with Government ethics rules, especially those that are found in the Standards of Conduct and in the Conflict of Interest laws.
- 6 Talk to your agency ethics official if you anticipate doing some teaching, speaking, or writing as an outside activity for compensation or engaging in representational activity before the Government.
- 7 Understand the post-employment rules either before or after your advisory committee service ends.
- 8 Remember that learning more about the Government's ethics rules will help ensure that you serve your committee honorably.



For more information

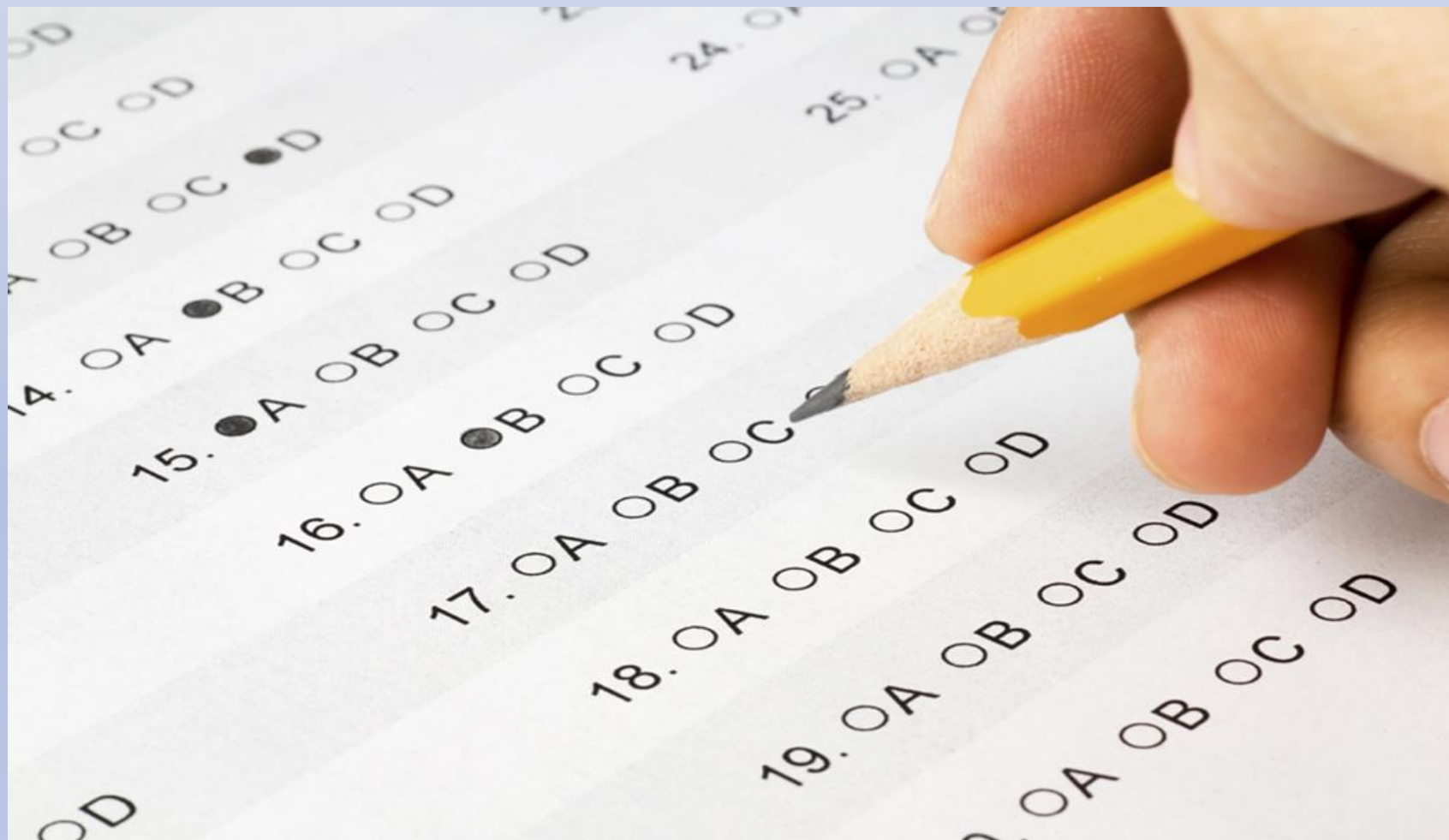
- ☐ Contact your agency ethics official

- ☐ Go to www.oge.gov





FACA Course Quiz





FACA Course Quiz

1. Advisory committee members must receive compensation (other than travel and per diem) to be designated as special Government employees (SGEs).

T or F



FACA Course Quiz

2. Certain criminal conflict of interest statutes apply to SGEs who serve on advisory committees.

T or F



FACA Course Quiz

3. An SGE serves on a FDA advisory committee. Its deliberations and recommendations on a drug application for a new cancer drug could directly and predictably affect the financial interests of a pharmaceutical company. The SGE owns \$30,000 of the company's stock. Name **one method** the SGE could use to avoid what might otherwise be a violation of a criminal conflict of interest statute.



FACA Course Quiz

4. The Standards of Ethical Conduct provide uniform guidance for all executive branch employees, **except** advisory committee members who are SGEs. These members will consult other agency regulations as their primary source for Government ethics rules.

T or F



FACA Course Quiz

5. The Standards of Ethical Conduct rules apply only on the days an advisory committee SGE is actually performing committee functions or traveling to and from meeting sites.

T or F



FACA Course Quiz

6. An SGE meets 6 times a year with an EPA advisory committee. The SGE's regular occupation is managing a consulting business. A client invites the SGE to dinner (value of \$50) to consult on a private matter. The client also happens to be an EPA contractor. However, they do not discuss the activities of the EPA advisory committee. The SGE **may accept** the free dinner, even though it exceeds the \$20 exception to the prohibition on gifts from prohibited sources.

T or F



FACA Course Quiz

7. A biologist who is an expert on marine life is employed as an SGE to assist NSF in developing a program of grants for the study of coral reefs. The SGE can continue to receive compensation for speaking and writing in a private capacity about **marine life**, including coral reefs, so long as the topic is not about the NSF program, which the SGE is developing.

T or F



FACA Course Quiz

8. All SGEs, including those serving on advisory committees, must file an OGE 450 (Confidential Financial Disclosure Report), unless required to file public financial disclosure reports or specifically exempted by their agency, regardless of how few days they actually perform their advisory committee responsibilities during a year.

T or F



Summary and Key Points

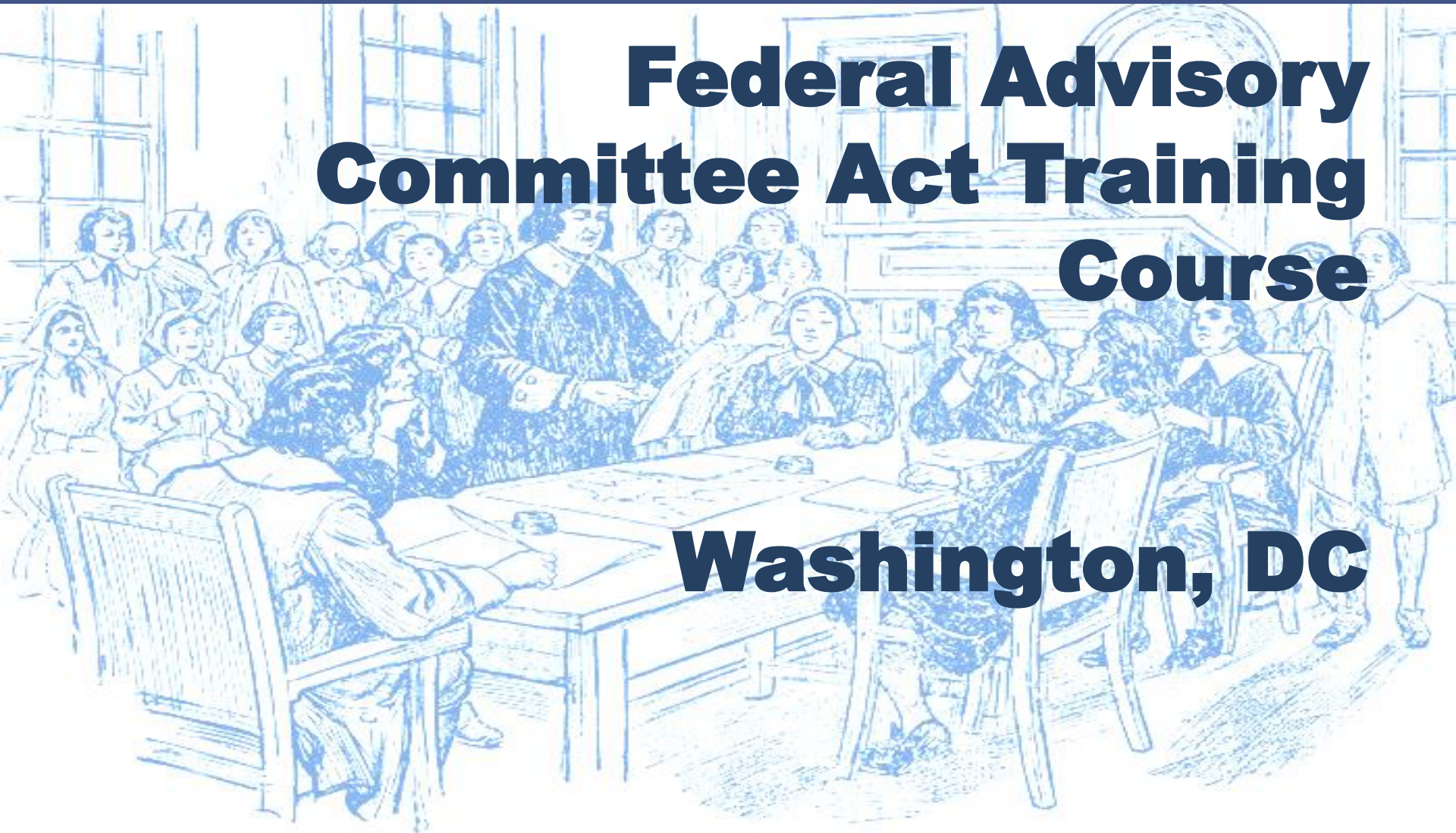
- **Member Status**
- **Standards of Conduct**
- **Conflict of Interest Laws**
- **Financial Disclosure Requirements**
- **Quiz**



U.S. General Services Administration

Federal Advisory Committee Act Training Course

Washington, DC





U.S. General Services Administration

A blue-toned illustration of a historical meeting. A man in a dark coat stands at the head of a long table, gesturing towards a group of people seated around the table. The room has large windows and a high ceiling.

The Importance of Federal Advisory Committee Act Recordkeeping

National Archives and Records Administration

Session Objectives

- ☑ Define and identify Federal Advisory Committee Act (FACA) records, non-record materials and personal papers
- ☑ Apply Presidential Records Act or Federal Records Act to your FACA records
- ☑ Use the General Records Schedule (GRS) for the disposition of FACA records
- ☑ Resources





Records Management

Why manage records?

- **Ensure public access to records**
- **Document the decisions and decision-making process of the committee**
- **Serve as institutional memory of the work of the committee**
- **Protect the rights of the Government and its citizens**
- **Effective and economical management of committee operations**
- **Preserve the actions and decisions of the Committee, which provide an understanding of the nation's history, science, and culture**



Initial Steps in Managing Information

Committee information is one of the following:

- **Presidential record**
- **Federal record**
- **Non-record**
- **Personal files**



Committee Records

- **Determine status based on the creation and function of the committee**
- **The Federal Records Act or the Presidential Records Act applies to your Committee records**



Presidential Committees

Governed by the Presidential Records Act if:

- **Authorized by Congress or directed by the President to solely advise the President**
- **May be created by Public Law or Executive Order**



What is a Presidential Record?

Documentary materials created or received by the President, their immediate staff, or a unit or individual of the Executive Office of the President whose function is to advise and assist the President.



Presidential Committees

Committees governed by the Presidential Records Act must:

- **Contact the White House Counsel**
- **Contact the Office of Presidential Libraries at NARA**



Federal Committees

Governed by the Federal Records Act if:

- **Established for the purpose of obtaining advice or recommendations and does not solely advise the President**
- **Contact your Federal Agency Records Officer**

<https://www.archives.gov/records-mgmt/agency/>



What is a Federal Record?

- **Recorded information --- regardless of media or format**
- **Made or received by a Federal agency in accordance with law or in the conduct of public business**
- **Preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, or other activities of the Federal Government, or because of the informational value they contain**



Committee Records

- Charter
- Enacting legislation
- Correspondence and memorandums
- Reports
- Transcripts
- Agendas
- By-laws
- Minutes
- Studies
- Publications
- Audiovisual records
- Working papers and drafts
- Membership Balance Plans



Committee Records

- **Contain unique, valuable information developed in preparing papers, studies, and reports**
- **Reflect significant actions**
- **Document programs, policies, decisions**
- **Convey policies**
- **Convey rationales for decisions and actions**
- **Document oral exchanges (memo to file)**
- **Document meetings (formal and informal)**



Committee Records

- Document persons, places, things, and matters
- Protect financial, legal and other rights of the Government and the American people
- Document the formulations and execution of actions, operations, and responsibilities
- Document the administration of the Committee



Subcommittee Records

- **Create Presidential or Federal Records**
- **Formal and Informal groups must document meetings and work such as:**
 - **Minutes**
 - **Working papers, drafts, and background material**
 - **Reports**
 - **Email**



Electronic Communications

Email, texts, instant messages, wikis, blogs, and social media tools are Federal records if:

- **Made or received by the Committee under Federal law or in connection with the transaction of public business**
- **Preserved or appropriate for preservation by the Committee as evidence of the Committee's organization, functions, policies, decisions, or because of the informational value of the data it contains**



Electronic Communications

- **Social Media**
 - <http://www.archives.gov/records-mgmt/bulletins/2014/2014-02.html>
- **Electronic Messages**
 - <http://www.archives.gov/records-mgmt/bulletins/2015/2015-02.html>
- **Email**
 - <http://www.archives.gov/records-mgmt/bulletins/2014/2014-06.html>



Working Papers and Drafts

Working files, such as preliminary drafts and rough notes, and other similar materials should be treated as records if:

They are circulated or made available to employees, other than the creator, for official purposes such as approval, comment, action, recommendation, follow-up, and

They contain unique information, such as substantive annotations or comments included therein, that add to a proper understanding of the formulation and execution of basic policies, decisions, actions, or responsibilities

(36 CFR 1222.12(c))



Committee Working Papers

- FACA, § 10(b) states that the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas, or other documents, which were made available to or prepared for or by each advisory committee, shall be available for public inspection
- FACA committees need to document the decision-making process as well as the decision or recommendation
- Substantive comments and changes to products by committee members should be documented and maintained as a record of the committee



Committee Working Papers

- Records created outside of the meeting such as:
 - Documents circulated to one or more committee member(s) or from committee members to staff, including
 - drafts, rough notes, emails, comments
 - Documents exchanged among committee members regarding committee business such as email
- Background material for studies and reports is required to be kept as records under FACA



EXERCISE

What are Committee Records?



Managing FACA Records

Records are managed through the life cycle

- Creation**
- Maintenance and Use**
- Disposition**



Creation of FACA Records

Designated Federal Official must ensure the creation and maintenance of adequate and proper documentation



Creation of FACA Records

Typical records created to document a meeting:

- Minutes**
- Agendas**
- Public comments**
- Briefing books, background material, presentations**
- Transcripts (if any)**
- Agency head's determination that a meeting may be closed to the public**



Maintaining Permanent Electronic Records

Format Guidance for the Transfer of Permanent Electronic Records

<http://www.archives.gov/records-mgmt/bulletins/2014/2014-04.html>

- Computer aided design (CAD)
- Digital audio
- Digital moving images
- Digital still images
- Geospatial Presentation
- Email
- Textual data (word processed, formatted and unformatted text)
- Structured data (databases, spreadsheets, statistical and scientific data)
- Web records





Disposition of FACA Records

Disposition means:

- **Transferring permanent records to NARA in accordance with GRS 6.2**
- **Destroying temporary records in accordance with GRS 6.2**
- **Transferring inactive records to off-site storage**



Disposition of Presidential FACA Records

- During a term of office, the President may dispose of Presidential records that no longer have administrative, historical, informational, or evidentiary value if—
 - The President obtains the views, in writing, of the Archivist concerning the proposed disposal of such Presidential records
- Upon the conclusion of a President's term of office, the Archivist assumes the custody, control, and preservation of, and access to, the Presidential records of that President.



Disposition of Federal FACA Records

- **Disposition of records of the Committee (excluding Presidential records) are governed by GRS 6.2 Federal Advisory Committee Records**
- **Administrative records of committees can be destroyed before the committee terminates through other GRS chapters**
 - **Financial Management and Reporting Records (GRS 1.1)**
 - **Travel records (GRS 9)**
 - **Employee Ethics Records (GRS 2.8)**
 - **Budget records (GRS 5)**



Permanent FACA Records

Item 010 Substantive Committee Records (non-grant review committees)

- **Records related to establishment/termination of the committee**
- **Records related to committee membership**
- **Records of committee meetings and hearing (transcripts)**
- **Records related to committee findings and recommendations**
- **Records created by committee members**
- **Records related to research collected or created by committee**



Permanent FACA Records

Item 010 Substantive Committee Records (non-grant review committees)

- **Documentation of advisory committee subcommittees**
- **Records that document activities of the subcommittees**
- **Other records documenting decisions not captured elsewhere, i.e. websites.**

PERMANENT. Transfer to the National Archives when records are 15 years old or upon termination of committee, whichever is sooner.



Permanent FACA Records

Item 020 Substantive Audiovisual Records (non-grant review committees)

- **Audiotapes, videotapes and/or other recordings of meetings and hearings not fully transcribed**
- **Captioned formal and informal analog or digital photographs, and any related finding aids**
- **Posters produced by or for the committee**

PERMANENT. Transfer to the National Archives when records are 3 years old or upon termination of committee, whichever is sooner.



Temporary FACA Records

Item 030 Grant Review Committee Records

- **Committee establishment**
- **Membership records**
- **Meetings records**
- **Recordings of meetings**
- **Photographs, posters and other audiovisual materials**

Temporary. Destroy upon termination of committee.



Temporary FACA Records

Item 040 Committee Accountability Records

- Travel costs
- Committee member payments
- Contractor costs
- Meeting room costs
- Federal Register notice costs

Temporary. Destroy when 6 years old. Longer retention is authorized if required for business use.



Temporary FACA Records

Item 050 Non-substantive Committee Records

- Drafts and copies of Federal Register notices
- Audiotapes and videotapes of meetings/hearing that have been fully transcribed or explicitly created for creating detailed meeting minutes
- Photographs of committee social events, routine events and other non-mission related activities

Temporary. Destroy when superseded, obsolete, no longer needed, or upon termination of the committee, whichever is sooner.



Temporary FACA Records

Item 050 Non-substantive Committee Records

- Records related to logistical or administrative aspects of meetings and activities
- Routine correspondence
- Non-substantive membership records
- Non-substantive web content

Temporary. Destroy when superseded, obsolete, no longer needed, or upon termination of the committee, whichever is sooner.



Disposition of CMO Records

Item 060 Committee Management Records

- Agency guidelines
- Correspondence
- Requests for approval of committee nominees
- Copies of records about committees maintained for reporting purposes

Temporary. Destroy when 3 years old, 3 years after submission of report, or 3 years after superseded or obsolete, as appropriate. Longer retention is authorized if required for business use.



Disposition of Federal FACA Records

Steps you can take to manage your records

- Offsite storage, i.e. Federal Records Center
- Transfer to the National Archives (permanent)



Resources and Assistance

Federal Records Act

<http://www.archives.gov/about/laws/disposal-of-records.html>

Presidential Records Act

<http://www.archives.gov/about/laws/presidential-records.html>

General Records Schedules

<https://www.archives.gov/records-mgmt/grs/>

Agency Records Officer listing

<https://www.archives.gov/records-mgmt/agency/>

NARA agency contacts

<https://www.archives.gov/records-mgmt/appraisal/>



Summary and Key Points

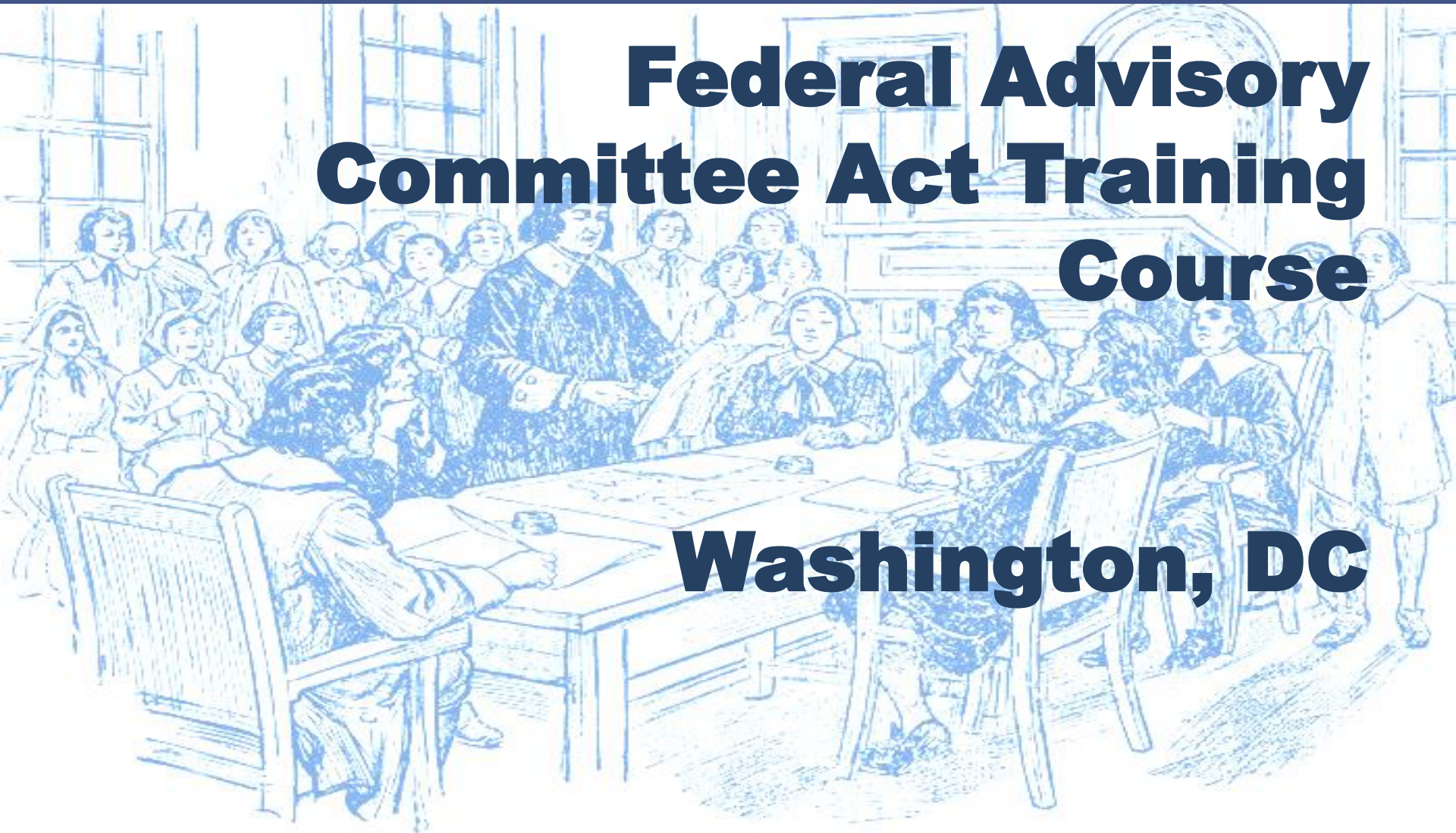
- **Presidential FACA Committees contact White House Counsel immediately**
- **Federal FACA Committees contact Agency Records Officer immediately**
- **Apply NARA's Format Guidance for the creation and management of permanent electronic records**
- **Use the General Records Schedule for the disposition of Federal FACA records**
- **Subcommittees and Working Groups create Federal records**
- **Manage Committee records from the START!**



U.S. General Services Administration

Federal Advisory Committee Act Training Course

Washington, DC





The Role and Responsibilities of the Committee Management Officer



Session Objectives

- ☑ **Committee Management Officer (CMO) Role and Responsibilities**
- ☑ **Agency Responsibilities**
- ☑ **Group Federal Officer (GFO)**
- ☑ **CMO Relationships**
- ☑ **Managing the Establishments, Renewals, and Terminations of an Agency's Federal Advisory Committees**
- ☑ **Annual Comprehensive Review (ACR)**
- ☑ **Agency FACA Program Website**





CMO Role and Responsibilities

The Federal Advisory Committee Act (FACA), 5 U.S.C. App., § 8

(b)The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

- (1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;**
- (2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and**
- (3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, United States Code, with respect to such reports, records, and other papers.**



CMO Role and Responsibilities

FACA Final Rule, 41 CFR § 102-3.115

- **Implement provisions of section 8(b) of FACA**
- **Carry out all responsibilities delegated by the agency head**
- **Ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping, such as:**
 - (a) Charter and membership documentation**
 - (b) Annual comprehensive review**
 - (c) Agency guidelines**
 - (d) Closed meeting determinations**



Agency Responsibilities

Agency Head Responsibilities, 41 CFR § 102-3.105

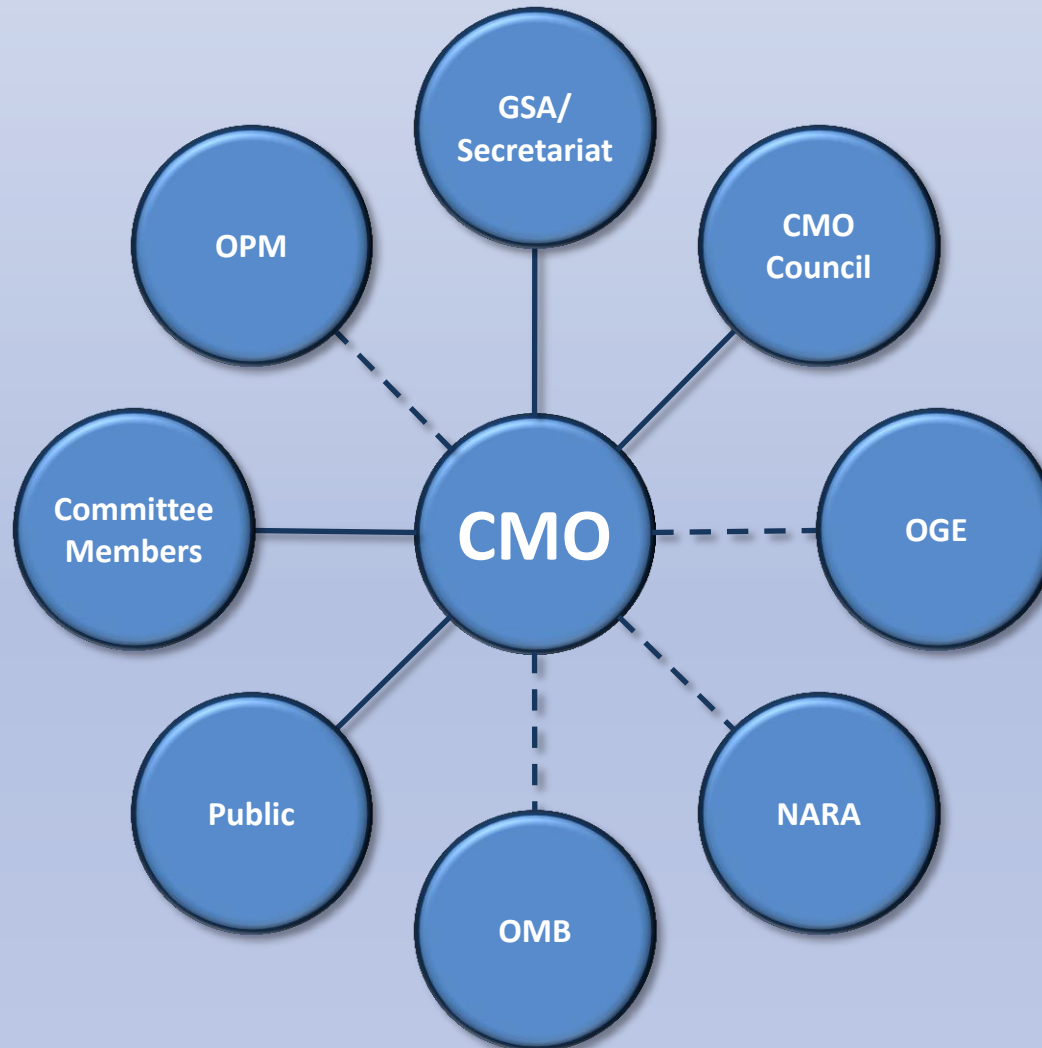
- Ensures that the Agency's FACA program complies with FACA and its implementing regulations
- Issues administrative guidelines and management controls
- Designates a CMO
- Provides written determinations for closed meetings
- Reviews need for committees annually
- Determines rates of compensation for members, if applicable
- Develops procedures to ensure committees are not inappropriately influenced
- Assures that members are reviewed for conflicts of interest
- Designates a Designated Federal Officer (DFO) for each Committee
- Provides for reasonable public participation
- Agency Head may delegate any of the above responsibilities



Group Federal Officer Role (GFO)

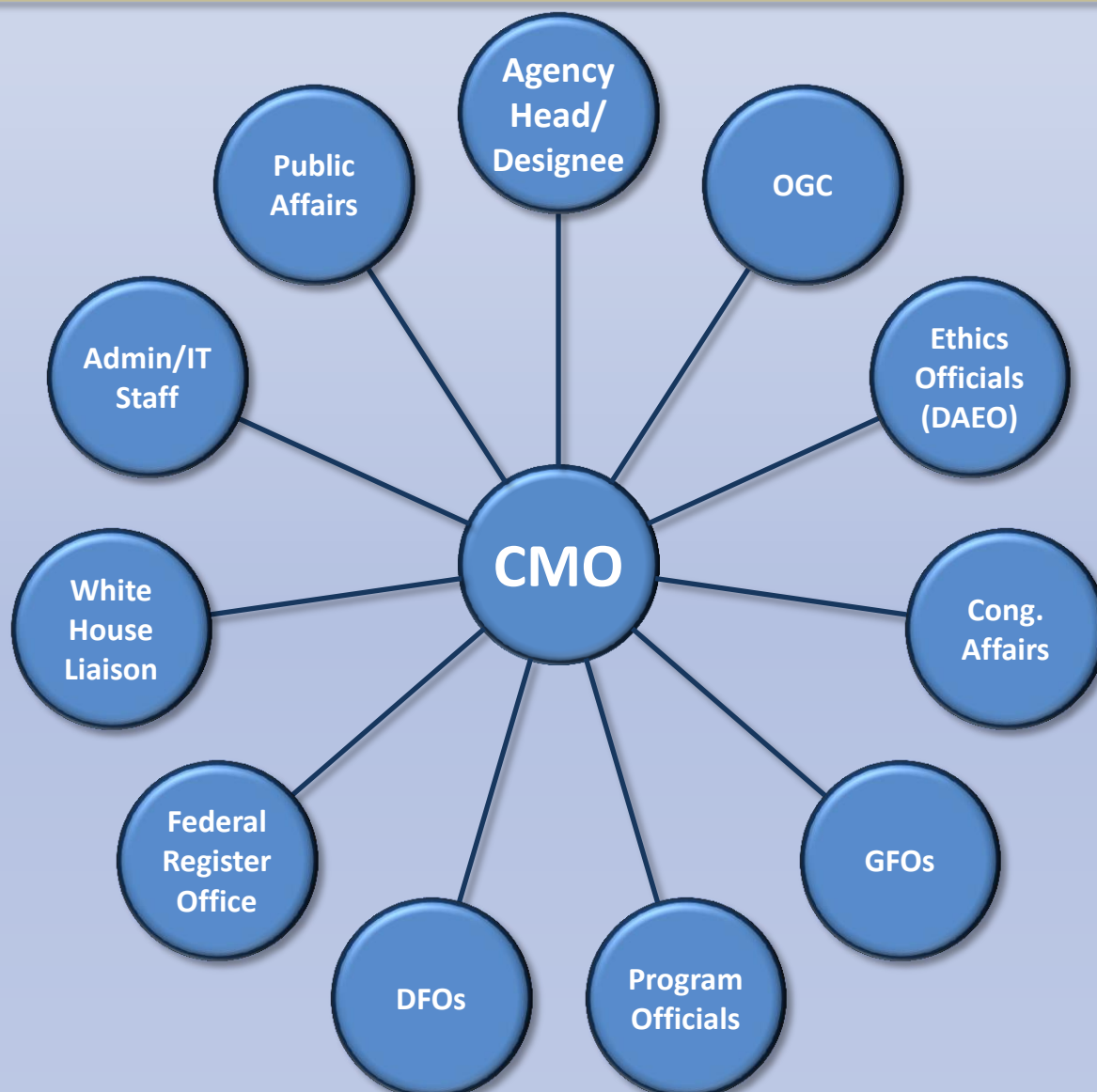
- **The GFO term was created by GSA and is not a statutory role under FACA**
- **In agencies having multiple components, the GFO is the person(s) within an agency responsible for coordinating the committee management program of one or more components**
- **The agency appoints the GFO**

External Relationships





Internal Relationships





Committee Establishment

- **Determine Committee Authority**
- Consult with GSA
- Develop Membership Balance Plan
 - Membership Balance Plan Guidance
 - Membership Balance Plan Template
- Create Charter
- Follow FACA Consultation Process Flowchart
- File Charter



Committee Establishment

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	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



Committee Establishment

- Determine Committee Authority
- **Consult with GSA**
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 - Membership Balance Plan Guidance
 - Membership Balance Plan Template
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Committee Establishment

Consult with GSA, 41 CFR § 102-3.60

- **Consults with GSA Desk Officer**
- **What procedures are required to establish, renew, or reestablish a discretionary advisory committee?**
 - (a) Consult with the Secretariat**
 - (b) Include required information in the consultation**
 - (1) Explanation of need**
 - (2) Lack of duplication of resources**
 - (3) Fairly balanced membership**



Committee Establishment

- Determine Committee Authority
- Consult with GSA
- **Develop Membership Balance Plan**
 - **Membership Balance Plan Guidance**
 - **Membership Balance Plan Template**
- Create Charter
- Follow FACA Consultation Process Flowchart
- File Charter



Committee Establishment

Membership Balance Plan

FACA § 5(b)(2) and (c), 41 CFR § 102-3.60(b)(3)

- A plan that describes how the agency will attain fairly balanced membership for a committee
- [Membership Balance Plan Guidance](#)
- [Membership Balance Plan Template](#)



Committee Establishment

- Determine Committee Authority
- Consult with GSA
- Develop Membership Balance Plan
 - Membership Balance Plan Guidance
 - Membership Balance Plan Template
- **Create Charter**
- Follow FACA Consultation Process Flowchart
- File Charter



Committee Establishment

Create Charter, FACA § 9(c), 41 CFR § 102-3.75

- **Charter purpose:**
 - **Enables the committee to meet and take actions**
 - **Specifies the committee's mission, goals and objectives, and general operational characteristics**
 - **Legitimizes the advisory committee**
- **Charters have a two-year life span unless otherwise specified in legislation**
- **Charters can be amended, if necessary**
- **Membership Balance Plan informs and is consistent with the committee charter**
- **[Preparing Federal Advisory Committee Charters](#)**



Committee Establishment

- Determine Committee Authority
- Consult with GSA
- Develop Membership Balance Plan
 - Membership Balance Plan Guidance
 - Membership Balance Plan Template
- Create Charter
- **Follow FACA Consultation Process Flowchart**
- File Charter

FACA Consultation Process

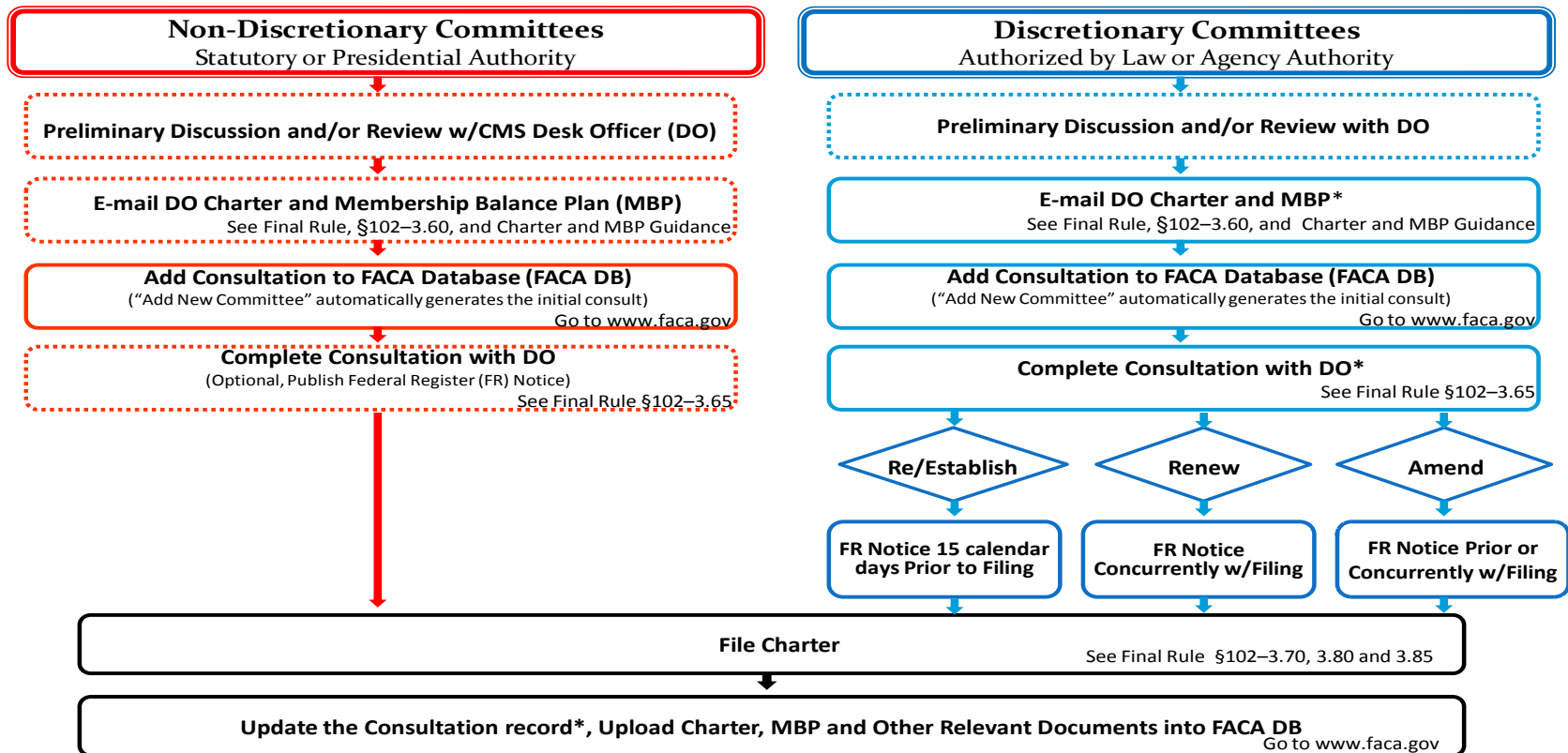
Committee Management Secretariat (CMS)

FACA CONSULTATION PROCESS

Establish or Re-establish Committee, and Renew or Amend Charter

Required

Recommended



*Recommended for minor amendments. See Final Rule §102–3.80

Termination – When a committee terminates (non-discretionary and discretionary), the agency shall notify the CMS and add a termination consultation to the FACA DB with the effective termination date. See Final Rule §102–3.30(b) and go to www.faca.gov

Dated: 3/10/2015



Committee Establishment

- Determine Committee Authority
- Consult with GSA
- Develop Membership Balance Plan
 - Membership Balance Plan Guidance
 - Membership Balance Plan Template
- Create Charter
- Follow FACA Consultation Process Flowchart
- **File Charter**



Committee Establishment

File Charter, § 41 CFR 102-3.70(a) and (b)

Before a Committee can meet, operate, or take any action, the Agency CMO must file a charter

- **For Discretionary Committees-** filed with Agency Head, Standing committees of the Senate and House having legislative jurisdiction over the Agency (this is the filing date), Library of Congress, and with the Secretariat
- **For Non-Discretionary Committees-** same requirements, but for Presidential committees the date filed with the Secretariat is the filing date



Annual Comprehensive Review

FACA § 7(b)

- Annual fiscal year comprehensive review of the activities and responsibilities of each advisory committee (end of summer/fall)
- Committee data is of keen interest to the White House, Congress, Non-Government Organizations (NGOs), and the general public
- DFOs typically enter and verify the accuracy of their committee data
- CMOs then verify the completeness and accuracy of all committees within their agency
- When agency verifications are complete, GSA reviews committee data and works with CMOs to correct data errors/gaps/inconsistencies



Agency FACA Program Website

[The President's January 2009 Memorandum](#) and the [Open Government Directive from OMB](#) require that agencies establish websites that

- increase opportunities for public participation
- encourage feedback on the agency's core mission activities
- provide information on the existing collaboration efforts of the agency
- show how the agency is meeting existing records management requirements



Agency FACA Program Website

Recommended Content:

- Description of the agency FACA program
- Detailed Committee Management Office contact information
- Links to your agency's federal advisory committee websites (for component agencies, link to the component committee management programs and their committee websites)
- Agency administrative procedures, including the agency public comment, subcommittee, and recordkeeping policies
- Agency policies or regulations relevant to the agency FACA program
- Link to the [GSA](#) and [eFACA](#) websites



Summary and Key Points

- If an agency has an advisory committee, it must have a CMO
- Agencies with components may have a GFO
- CMOs should nurture their external and internal relationships
- CMOs play an integral role in advisory committee establishment, renewal, reestablishment, and termination
- It is critical to understand the establishment authority of an advisory committee
- The success of the ACR is dependent on the CMO
- While not required, best practice is to have a website for the agency FACA program



Quiz

- **Who is responsible for maintaining and updating agency guidelines and procedures?**
- **What is the filing date for charters?**
- **Is consultation with GSA required for a major or minor amendment of a non-discretionary committee?**
- **Who is responsible for adding the committee to the FACA Database?**



Quiz

- **Is the Membership Balance Plan required for discretionary committees?**

Yes_____ No_____

- **No advisory committee may meet or take action until a charter has been filed by the CMO.**

True_____ False_____

- **An advisory committee charter must be renewed every two years unless otherwise specified in legislation.**

True_____ False_____



Quiz

- If a discretionary committee was chartered on January 31, 2007, and its charter was amended on April 15, 2007, the committee charter need not be renewed until April 15, 2009.

True____

False____

- To establish a discretionary advisory committee a charter must be filed with: a.) the agency Head, b.) the standing committees of the House and Senate having legislative jurisdiction of the agency, c.) Library of Congress, d.) GSA/CMS

True____

False____



Quiz

- Charter amendments to discretionary committees which involve changes in objectives, scope and duties can be made by the head of an agency at his (her) discretion without prior consultation with GSA/CMS as long as notification is made within a reasonable period of time.

True____

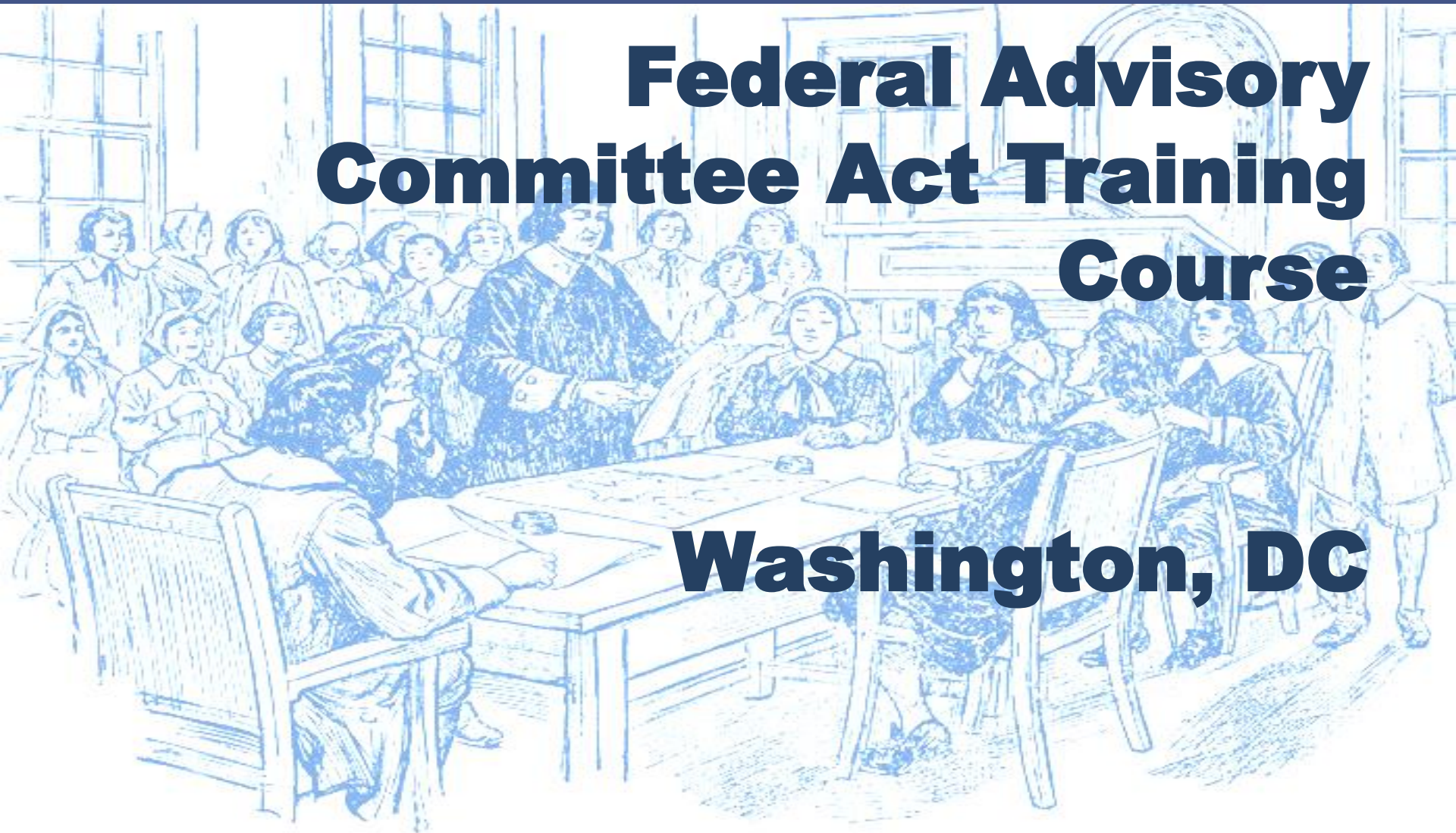
False____



U.S. General Services Administration

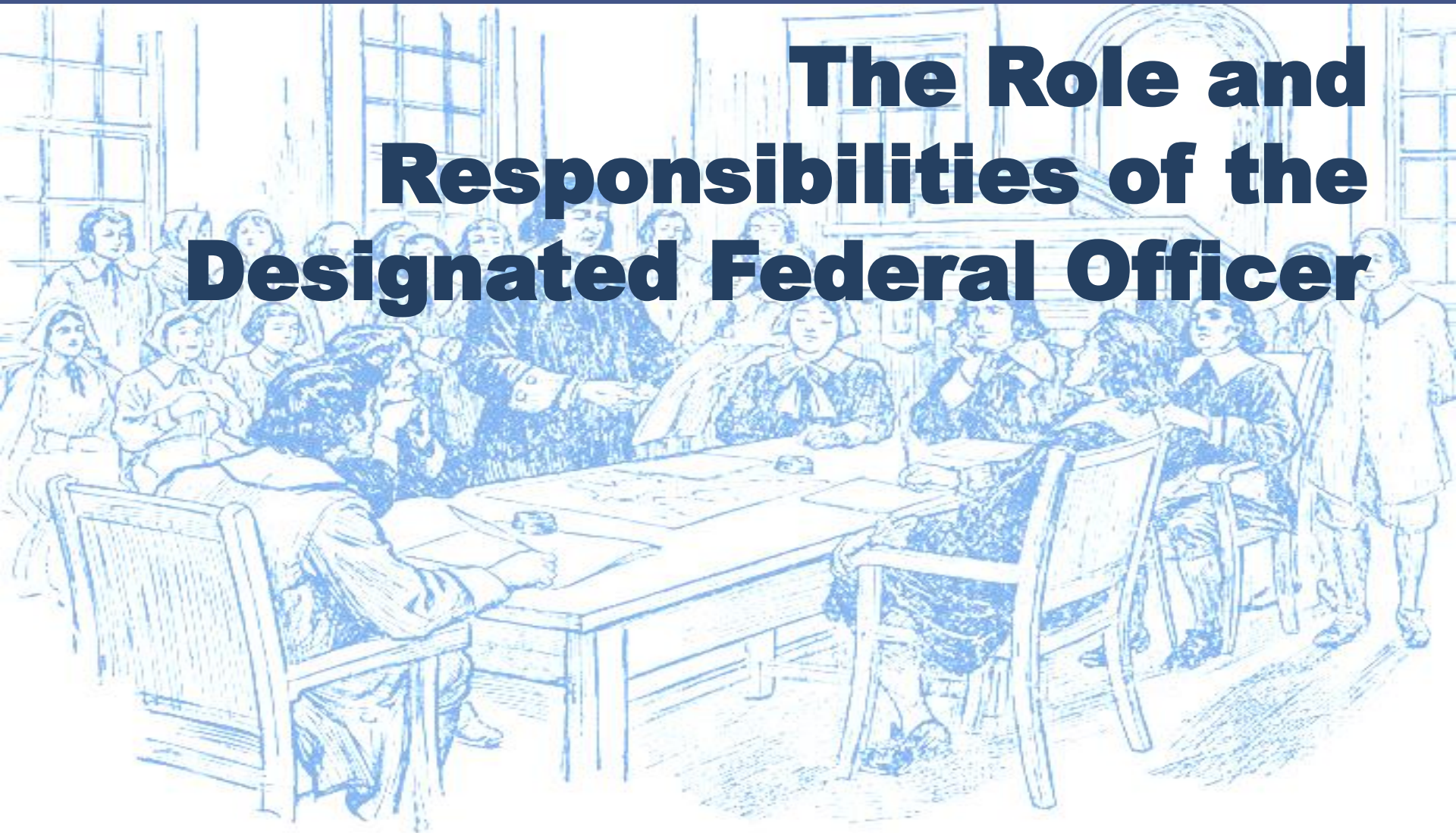
Federal Advisory Committee Act Training Course

Washington, DC





The Role and Responsibilities of the Designated Federal Officer



Session Objectives

- ☑ Designated Federal Officer (DFO) Role and Responsibilities
- ☑ DFO Relationships
- ☑ Before the Committee Meets...
- ☑ Types of Federal Advisory Committee (FAC) Meetings
- ☑ FAC Meeting Considerations
- ☑ Subcommittees
- ☑ Annual Comprehensive Review (ACR)
- ☑ Federal Advisory Committee Websites





DFO Role and Responsibilities

The Federal Advisory Committee Act (FACA), 5 U.S.C. App. § 10(e):

- **There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee**
- **The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting**
- **No advisory committee shall conduct any meeting in the absence of that officer or employee**



DFO Role and Responsibilities

The Federal Advisory Committee Act (FACA), 5 U.S.C. App. § 10(f):

- **Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated federal officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee**



DFO Role and Responsibilities

FACA Final Rule, 41 CFR § 102-3.25, 102-3.120

- **Designated by the agency head for each advisory committee**
- **Implements sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO**



DFO Role and Responsibilities

DFO role requires:

- **Knowing how FACA, FACA regulations, Secretariat guidance, and related laws apply**
- **Understanding the agency FACA administrative procedures**
- **Excellent oral & written communication skills (briefings)**
- **Strong coordination/organizational skills**
- **Ability to work with external parties (public)**
- **Training**



DFO Role and Responsibilities

- What comes first, the DFO or the committee?
- Understanding the authority/function of your committee
- Understanding the role of the DFO in:
 - Establishing, Managing, Operating, and Terminating a FAC
 - Use and purpose of subcommittees
 - Serving as liaison between your FAC and the public
- Ensuring independence of your FAC



Internal and External DFO Relationships



A small graphic in the top-left corner shows a group of people seated around a large, curved table, representing a committee meeting.

Before The Committee Meets...

- **Verify the committee's charter is current and filed**
- **Ensure any member ethics requirements are addressed**
- **Determine your meeting topics**
- **Publish a *Federal Register* notice a minimum of 15 calendar days prior to meeting**
- **Best practices:**
 - **Orient new members to committee mission**
 - **Explain FACA basics to committee members**
 - **Understand how to handle public inquiries/comments**
 - **Discuss agenda/conduct of meeting with the committee chair**



Types of FAC Meetings

- **Open**
- **Partially Closed or Fully Closed**
 - Government in the Sunshine Act
 - Remember 15 day *Federal Register* notice requirement still applies
- **Administrative – NOT “closed”**
- **Preparatory Work – NOT “closed”**



FAC Meeting Agendas

- **Prepare agenda well in advance of meeting**
- **Post on committee website**
- **Identify closed portions of meetings**
- **Follow agenda closely at meetings**
- **Include descriptive meeting topics**
- **Include names and affiliations of all speakers**
- **If applicable, include time and length of public comment period**



FAC Meeting Format Options

- **Face-to-face**
- **Webcasting**
- **Teleconference**
- **Internet**
- **Combination of the above**





FAC Meeting Considerations

- **Choosing a meeting location**
 - Physical location/space
 - Public and handicapped access
 - Security needs?
- **Conducting the meeting**
 - DFO and a Chair must be present at all times
 - Unless properly closed, all committee activity occurs in public forum
 - Clearly identify members

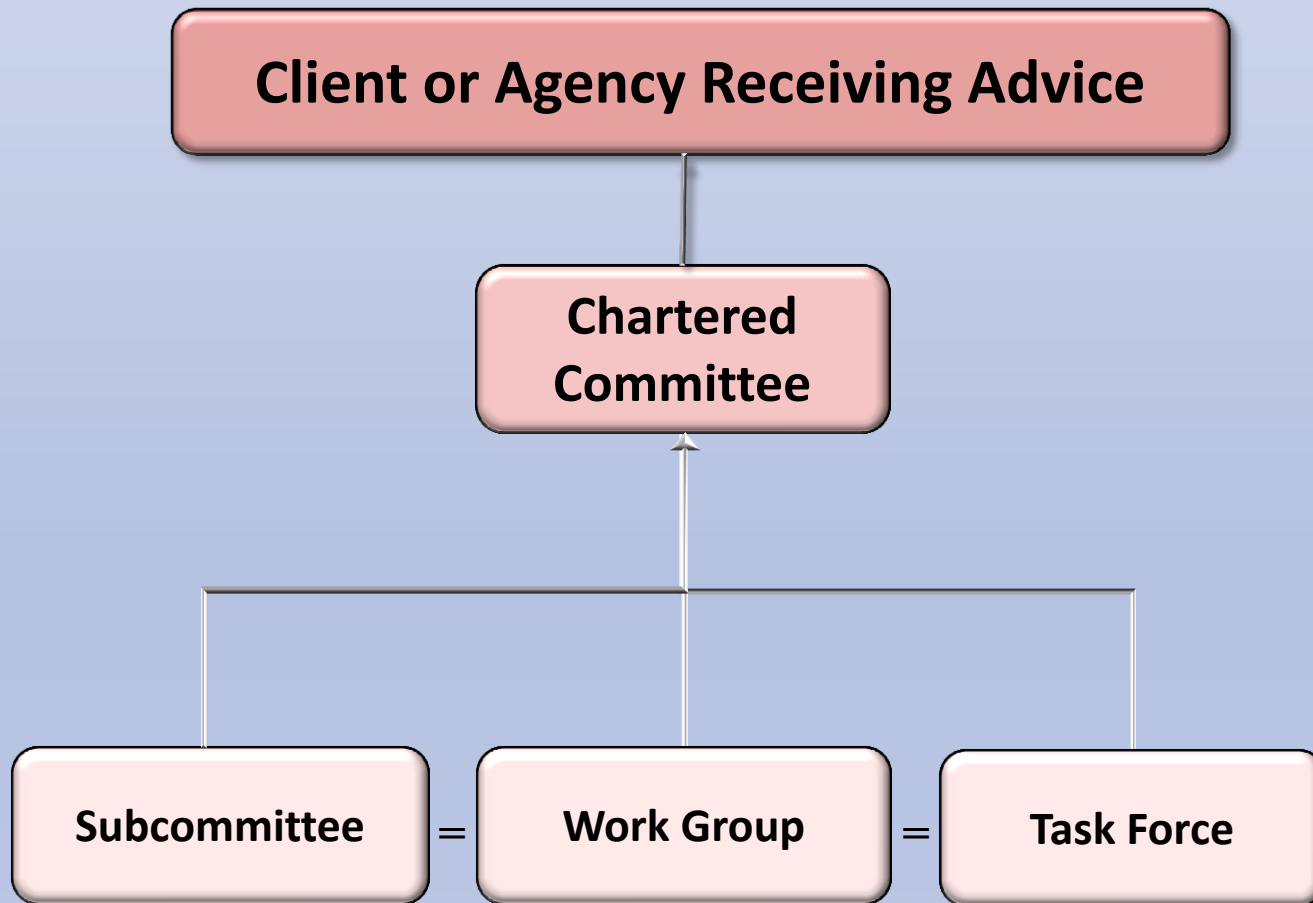


FAC Meeting Considerations

- **Interacting with the public:**
 - **Written vs. oral comment**
 - **Timing of public comment period at meetings**
 - **Making materials available and when to make them available - § 10(b)**
 - **The press**
- **Recordkeeping:**
 - **Minutes - always taken; minimum requirements (when, where, who, what)**
 - **Chair certifies minutes within 90 days; transcript is separate**



Providing Advice





Subcommittees

- **Whether subcommittees are open to the public or not, the agency must:**
 - **Designate a subcommittee DFO**
 - **Appoint subcommittee members**
 - **Comply with recordkeeping requirements (i.e., minutes)**
 - **Allow public access to subcommittee records**



Annual Comprehensive Review

- Annual fiscal year review of the activities and responsibilities of each advisory committee
- DFOs typically enter the data (in real time) that is reviewed
- DFOs are first line reviewers for the ACR
- DFO certification followed by CMO and GSA reviews
- This is not the time to enter the data; it is the time to review what is entered!



Federal Advisory Committee Websites

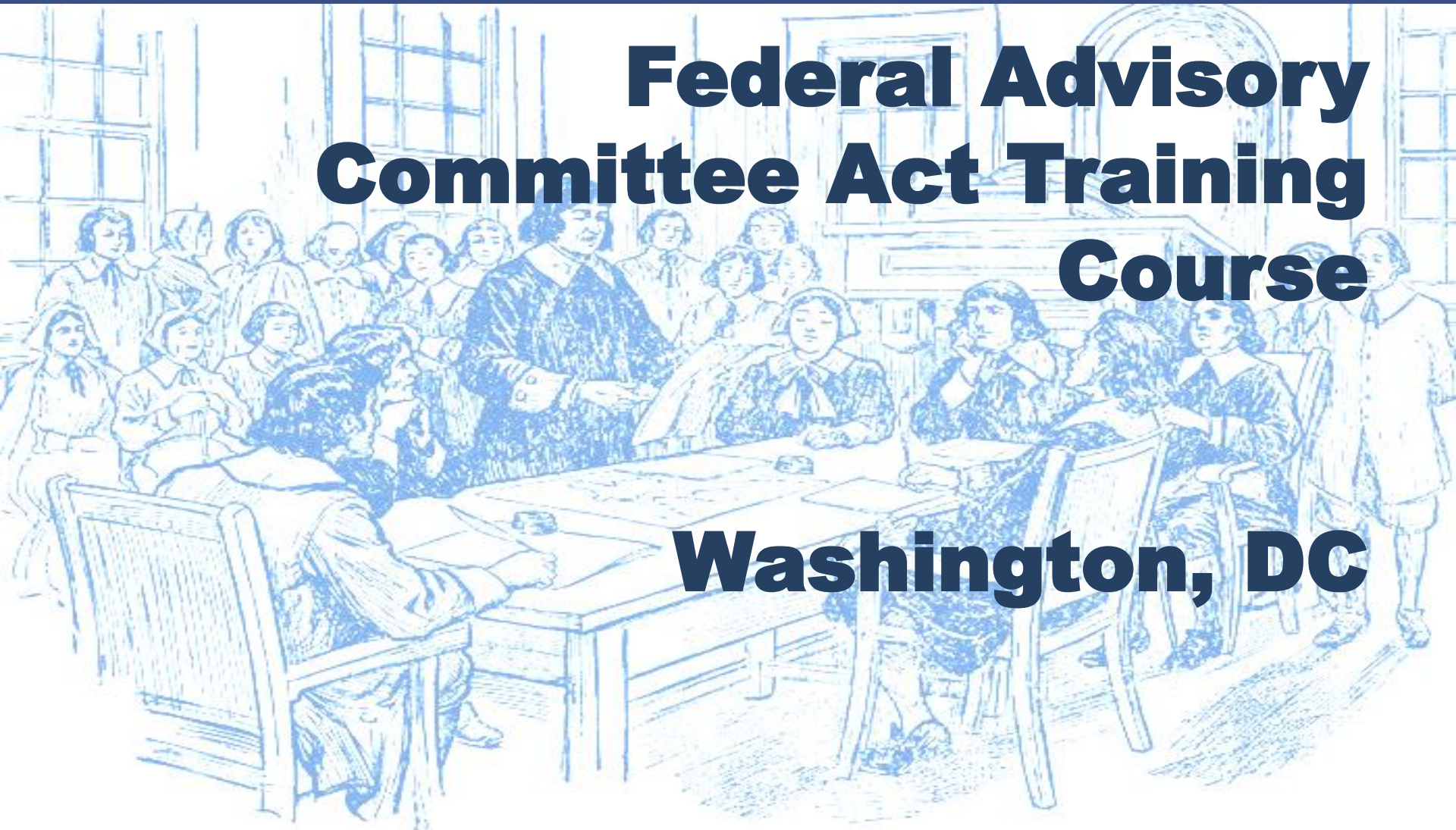
- **Provide transparency**
- **Assist the DFO in managing the committee/public inquiries**
- **Should link to the agency CMO FACA website**
- **Recommended content includes:**
 - **Identify committee as FAC; link to relevant laws, regulations, and guidance**
 - **Describe FAC mission and scope; link to charter, by-laws**
 - **Specify committee membership**
 - **Provide a link to meeting notices, materials, minutes, and reports**
 - **Describe the committee public comment policy**
 - **Provide a meeting calendar**



Summary and Key Points

The DFO:

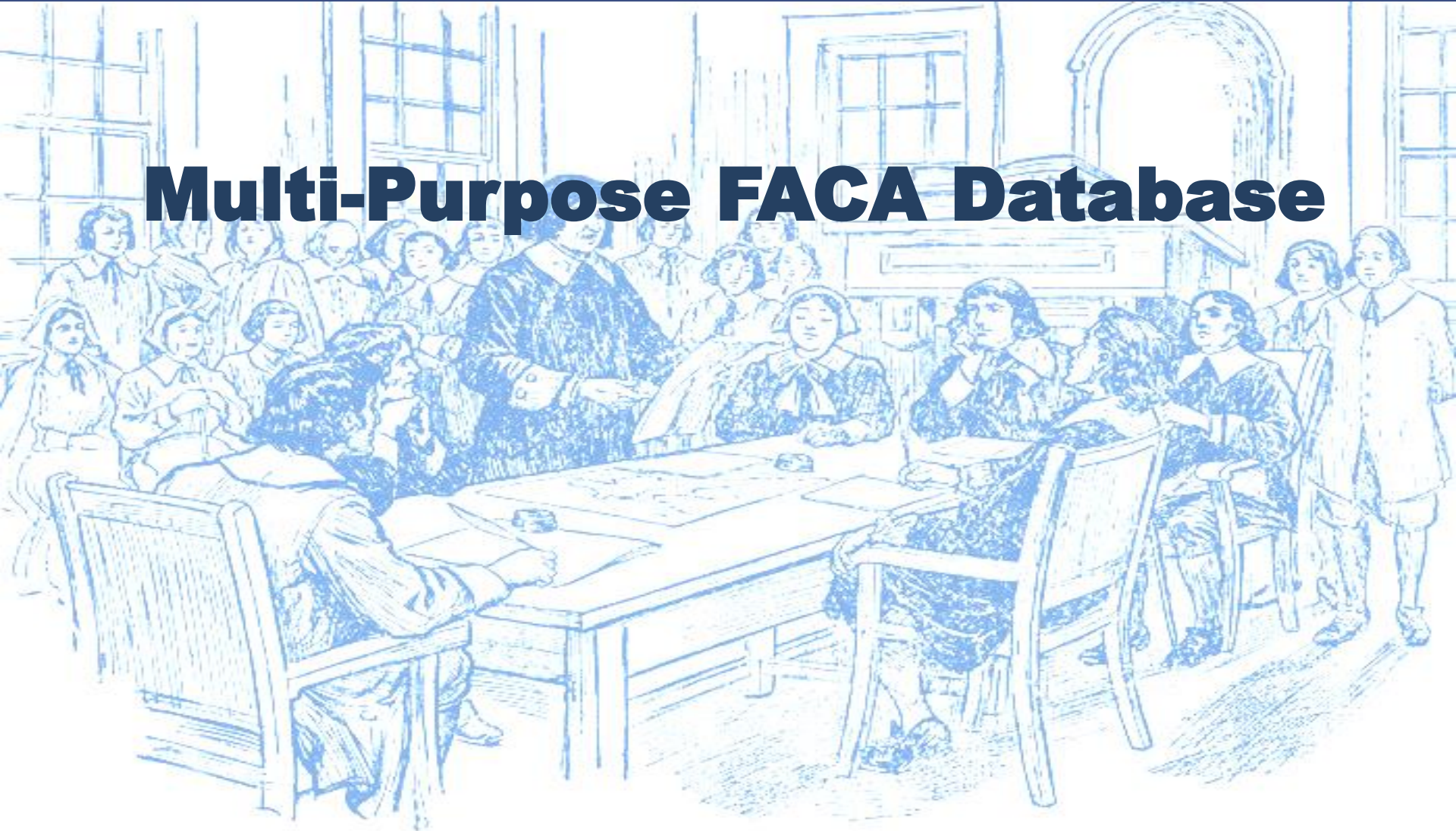
- **Plays a central role in the management and operation of FACs**
- **Wears many hats, utilizes many skills**
- **Needs to be properly trained (i.e., this course!)**
- **Is the first line of defense for FACA compliance (i.e., balance, FAC independence) and the ACR**
- **Should use websites to help manage public input and provide transparency**
- **Needs to pay attention to ethics and recordkeeping requirements**

A detailed blue-toned illustration of a historical meeting. A man in a dark, patterned coat stands in the center, gesturing with his hands as if speaking. He is surrounded by a group of people, both men and women, dressed in 18th-century attire. Some are seated at a long wooden table in the foreground, while others stand behind them. The room has large windows with multiple panes, and the overall atmosphere is formal and professional.

Federal Advisory Committee Act Training Course

Washington, DC

Multi-Purpose FACA Database





Session Objective

To provide an overview of the features and multi-purpose use of the FACA Database.

The What, Why, Who, and Where?



What is the FACA Database?

www.facadatabase.gov

FACA Database
Federal Advisory Committee Act

Access: [Public Access](#) [Log In](#)

[Home](#) [Agencies](#) [Search](#) [ACR Files](#) [Datasets](#) [Help](#) [FAQ](#)

The Federal Advisory Committee Act (FACA) database is used by Federal agencies to continuously manage an average of 1,000 advisory committees government-wide. This database is also used by the Congress to perform oversight of related Executive Branch programs and by the public, the media, and others, to stay abreast of important developments resulting from advisory committee activities.

Although centrally supported by the General Services Administration's Committee Management Secretariat, the database represents a true "shared system" wherein each participating agency and individual committee manager has responsibility for providing accurate and timely information that may be used to assure that the system's wide array of users has access to data required by FACA.

[Committee Management Secretariat Website](#)


[Common Questions about Federal Advisory Committees](#)

[The Annual Report of the President on Federal Advisory Committees - 1972-1998](#)

[Case Digest Search](#)

Visitor Count: 2,121,442

Home

 [GSA and DataCall Systems Support Team](#)
[Security and Privacy Notice](#)



Why Use the FACA Database?

- **To Conduct Required Data Reporting**

FACA, 5 U.S.C. App. § 2

Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees

FACA, 5 U.S.C. App. § 7(b)

Conduct a comprehensive review of the activities and responsibilities of each advisory committee



Why Use the FACA Database?

- **Transparency** - On the internet since 1997, it allows the public, executive branch, and others to:
 - conduct research
 - download FACA datasets for analysis
 - find information on committee activities and membership
 - find agency contacts at the agency and committee level for additional information
 - search committees working on similar topics across the executive branch
 - better understand each committee's purpose (charters), member composition (membership balance plans), need, and outcomes
 - see which committees are being established, renewed, or terminated



Why Use the FACA Database?

- **Compliance with statutory and regulatory requirements**
 - Filing charters with GSA
 - Conducting the Annual Comprehensive Review
 - Conducting consultations between CMO's and GSA
 - Collecting information for drafting the bi-annual Presidential Executive Order for continuing/renewing Presidential Advisory Committees

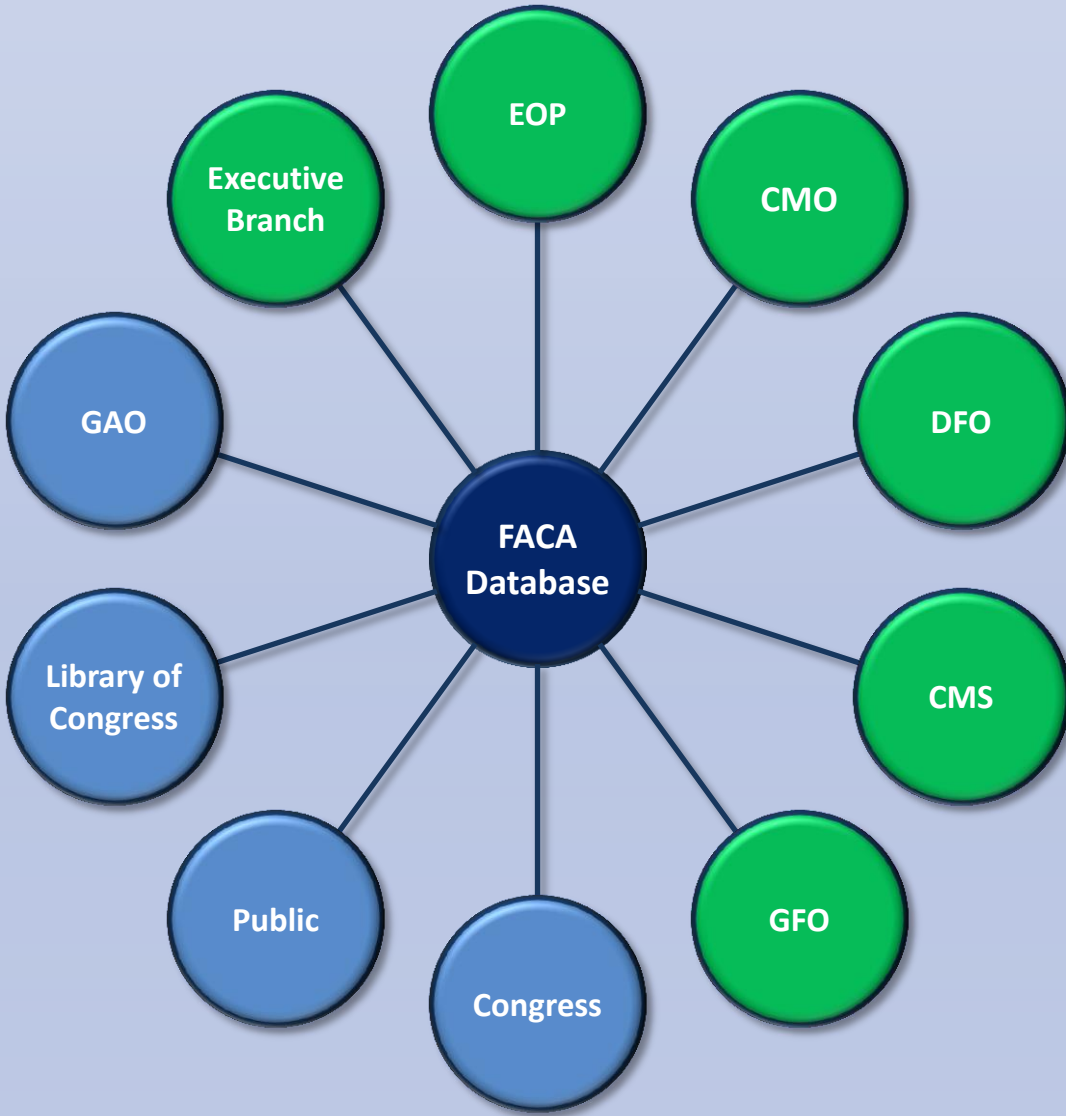


Why Use the FACA Database?

- **FACA Program Management**
 - Charter renewal dates automatically calculated when committees established/renewed
 - Displays the result of the annual review required by the agency head
 - System reports: track charter expirations, generate agency and government-wide statistics, run data checks, etc.



Who Uses the FACA Database? Internal/External Users





Where Can You Find Information in the Database?

Demonstration of the FACA Database



Views and Actions by Users

	USER ROLES			PUBLIC VIEW
	CMS	CMO	DFO	
View Committees	X	X	X	X
View Agency Committees	X	X		X
View Consultation	X	X	X	
Assign User Password	X	X		
Populates Data		X	X	
Verify Committee Data	X	X	X	X
Add Subcommittees	X	X		X
Remove Subcommittees	X			X
Populates Subcommittee Data		X	X	X
Verify Agency ACR Reports		X		X
Verify Committee ACR Reports			X	X
Add/Update Consultation	X	X		
Upload Charter and MBP		X		X
Upload Committee Reports and Minutes		X	X	X
Access Agency Reports	X	X	X	X
Access Committee Status Reports	X	X	X	
Access Agency Status Reports	X	X		



Summary

- **Discussed the features and multi-purpose use of the FACA Database:**
 - **What is the FACA Database**
 - **Why use the FACA Database**
 - **Who uses the FACA Database**
 - **Where to find information in the FACA Database**