

## **INFORMATION PAPER**

### **Federal Advisory Committee Act**

#### **PURPOSE OF THE FEDERAL ADVISORY COMMITTEE ACT**

- The Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), was enacted to enhance public accountability of, and reduce the wasteful expenditures on, Federal advisory committees.
- FACA is a procedural law, governing the establishment, operation, administration, and termination of Federal advisory committees.
- An advisory committee is
  - Any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice and recommendations
  - Excludes committees comprised solely of full-time, or permanent part-time, Federal employees or any committee created by the National Academy of Sciences or the National Academy of Public Administration

#### **OTHER STATUTES/PRESIDENTIAL DIRECTIVES AFFECTING ADVISORY COMMITTEES**

- FACA is considered to be an integral part of the Four Pillars of Openness in Government:
  - Administrative Procedures Act of 1946
  - Federal Advisory Committee Act of 1972
  - Freedom of Information Act of 1976
  - Government in the Sunshine Act of 1977
- The following statutes and Presidential directives also affect Federal advisory committees:
  - Ethics and “Conflict of Interest” statutes, regulations, and other rules
  - Unfunded Mandates Reform Act of 1995
  - The White House Ban on Lobbyists
  - Personnel laws and rules
  - Appropriations law

#### **GOVERNING PRINCIPLES: TRANSPARENCY AND OVERSIGHT**

- DoD must develop and file a charter and membership balance plan before any advisory committee can begin working; committees do not perform inherently government functions – they provide advice and recommendations only; committees must have a clearly defined purpose
- Subcommittees are generally not subject to the open meeting requirements of FACA, but must report out to an advisory committee and not directly to a Federal officer or agency; the parent committee must fully and openly deliberate the subcommittee’s recommendations, no rubberstamping allowed
- No inappropriate influence by Federal employees or special interest groups on committee’s ability to provide independent advice; membership must be fairly balanced in terms of point of view represented and functions to be performed
- Federal statute/regulation require transparency – the public, with some exceptions, has the right to watch public policy development; committees lack the authority to close or partially close meetings to the public; that authority rests solely with DoD and must conform to statutory limitations; the committee’s Designated Federal Officer must attend the entirety of all committee/subcommittee meetings and may adjourn the meeting if in the public interest
- Public has legal right to submit written statements, and may be allowed to provide oral comments, for consideration by committee members when developing their advice and recommendations
- Committee’s records, to include working papers, must be made contemporaneously available to the public; committee cannot exert Freedom of Information Act exemptions – that authority rests solely with DoD; DoD must provide adequate support and provide access to appropriate DoD data/information and senior leader; release of DoD data/information to committees must conform to DoD policies and procedures pertaining to the public release of DoD data and information