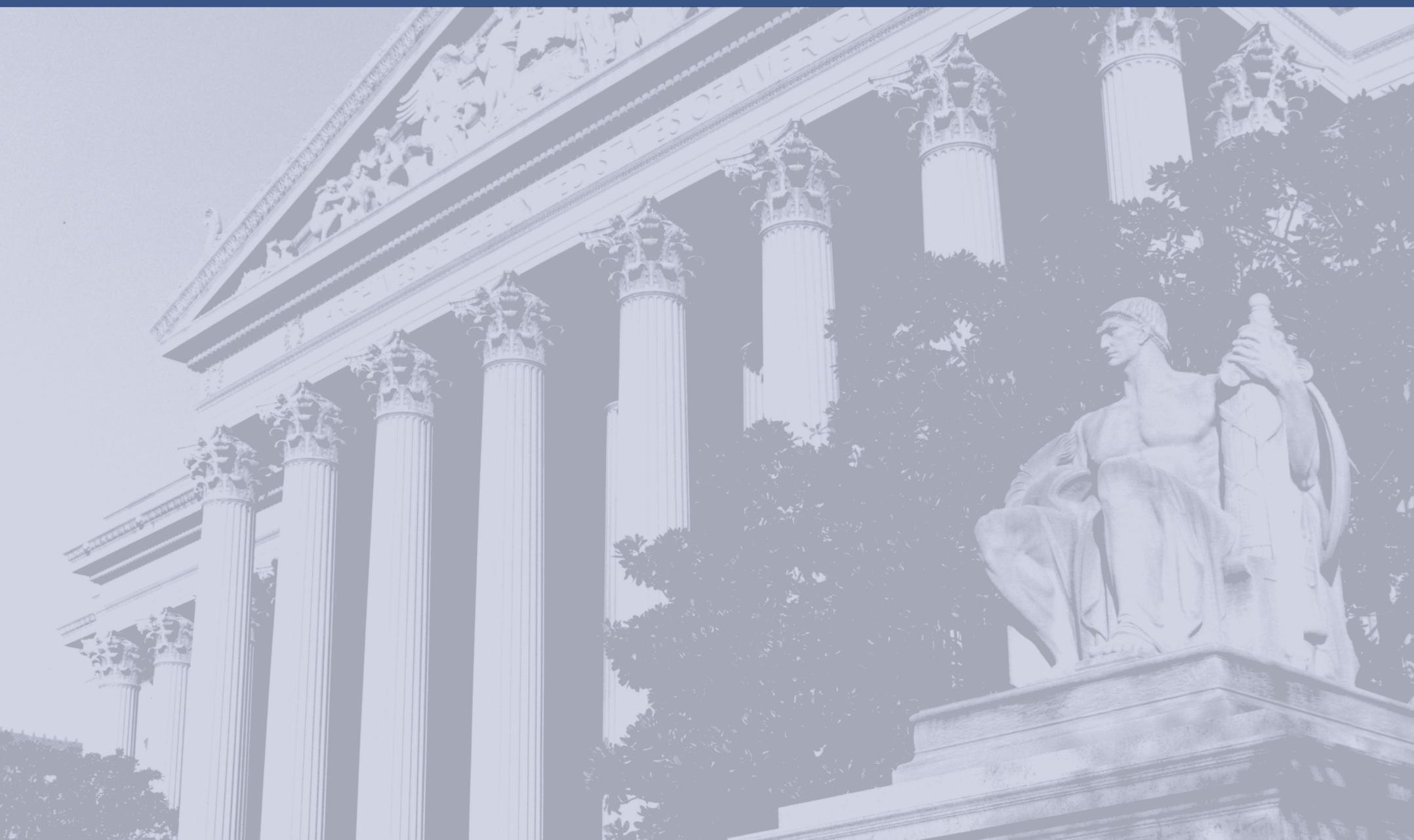


Meeting of the FOIA Advisory Committee

at the NATIONAL ARCHIVES

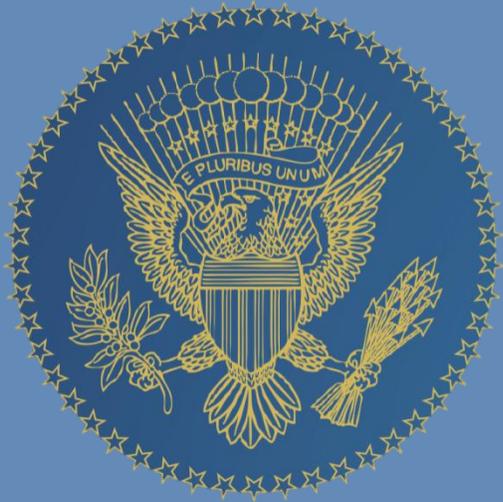


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THE OPEN GOVERNMENT PARTNERSHIP

SECOND OPEN GOVERNMENT
NATIONAL ACTION PLAN FOR
THE UNITED STATES OF AMERICA

December 5, 2013

Introduction

Throughout his Administration, President Barack Obama has prioritized making government more open and accountable, and has taken substantial steps to increase citizen participation, collaboration, and transparency in government.

At the inaugural Open Government Partnership (OGP) meeting on September 20, 2011, President Obama reiterated his belief “that the strongest foundation for human progress lies in open economies, open societies, and in open governments.” The United States has worked both domestically and internationally to ensure global support for Open Government principles to promote transparency; fight corruption; energize civic engagement; and leverage new technologies in order to strengthen the foundations of freedom in our own Nation and abroad.

In support of these principles domestically, the Obama Administration in 2011 launched the first [U.S. Open Government National Action Plan](#) (NAP) — a set of 26 commitments that have increased public integrity, enhanced public access to information, improved management of public resources, and given the public a more active voice in the U.S. Government’s policymaking process. The Administration continues to make progress in all 26 areas, with 24 of the initial commitments already completed. A notable example of the progress made since the release of the first NAP is the successful launch of [We the People](#), the White House petitions platform that gives Americans a direct line to voice their concerns to the Administration via online petitions. In two years, more than 10 million users have generated over 270,000 petitions on a diverse range of topics, including gun violence, which received a video response from the President, and unlocking cell phones for use across provider networks, which led directly to policy action.

Building upon these efforts to create a more efficient, effective, and accountable government, the Administration is issuing the second Open Government National Action Plan for the United States of America. The new plan includes a wide range of actions the Administration will take over the next two years, including commitments that build upon past successes as well as several new initiatives.

In developing the second NAP, the Federal Government sought input from the general public, a broad range of civil society organizations, academia, and the private sector to refine the commitments in this document to build a more open, transparent, and participatory United States Government. In addition, civil society organizations provided valuable feedback through a [public report](#), issued in March 2013, on the U.S. Government’s implementation of the first NAP. Civil society organizations also submitted recommendations for commitments to include in the second NAP, many of which were incorporated into this report. In developing the second NAP, Administration policymakers also sought input from the public via the White House Open Government blog and other interactive online platforms.

This document will serve as a roadmap for the next two years as the Administration works in partnership with the public and civil society organizations to carry forth these Open Government efforts. This report, however, is not representative of all U.S. Government efforts to further openness. The process of opening government is a continuing work-in-progress. Under the President’s leadership, the

Administration will continue to generate and implement Open Government policies and reforms, as well as continue to seek input from outside groups and citizens about how to create a more Open Government.

U.S. National Action Plan Initiatives

Creating a more Open Government requires a sustained commitment by public officials and employees at all levels of government; it also requires an informed and active citizenry. These new Open Government commitments include the expansion of original commitments as well as the launch of new initiatives. The Administration will work with the public and civil society organizations to implement each of these commitments over the next two years.

Open Government to Increase Public Integrity

1. Improve Public Participation in Government

In the first NAP, the Administration expanded opportunities for public participation in government, recognizing the value of the American public as a strategic partner in solving some of the country's most difficult challenges. The United States is committed to continuing to expand public participation in government and will:

- **Expand and Simplify the Use of *We the People*.** In 2014, the White House will introduce improvements to *We the People* that will make petitioning the Government easier and more effective. These improvements will enhance public participation by creating a more streamlined process for signing petitions and a new Application Programming Interface (API) that will allow third parties to collect and submit signatures to *We the People* petitions from their own websites. These improvements will also enhance transparency by enabling the public to perform data analysis on the signatures and petitions. The White House will publish a software development kit to help people build tools using the *We the People* API and will engage with the public on improvements to the API and expansion of its use.
- **Publish Best Practices and Metrics for Public Participation.** In the first National Action Plan, the Administration committed to identify best practices for public participation in government and to suggest metrics that would allow agencies to assess progress toward this goal. Over the past two years, the Administration consulted with the public, civil society stakeholders, and academics on how best to implement this initiative from the first National Action Plan. In 2014, the United States will continue these efforts and publish best practices and metrics for public participation.

2. Modernize Management of Government Records

The backbone of a transparent and accountable government is strong records management that documents the decisions and actions of the Federal Government. When records are well managed, agencies can use them to assess the impact of programs, reduce redundant efforts, save money, and

share knowledge within and across their organizations. Greater reliance on electronic communications has radically increased the volume and diversity of information that agencies must manage. With proper planning, technology can make these records less burdensome to manage and easier to use and share. To meet current challenges, the National Archives and Records Administration (NARA) will work with Federal agencies to implement new guidance that addresses the automated electronic management of email records, as well as the Presidential Directive to manage both permanent and temporary email records in an accessible electronic format by the end of 2016. NARA will also collaborate with industry to establish voluntary data and metadata standards to make it easier for individuals to search publicly-available government records.

3. Modernize the Freedom of Information Act

The Obama Administration has already made important progress to improve the Freedom of Information Act (FOIA) process by simplifying the process of filing requests at many agencies, by proactively disclosing information in the public interest in advance of requests, by speeding up processing times, by greatly reducing FOIA backlogs, and by publishing more data on FOIA compliance. There is still much more that the Administration can do and the United States is committed to further modernizing FOIA processes through the following initiatives:

- **Improve the Customer Experience through a Consolidated Online FOIA Service.** More than 100 Federal agencies are subject to FOIA. For the average requester, this can mean significant energy spent searching for the right agency and navigating the unique process for submitting a request to that agency. The Administration will launch a consolidated request portal that allows the public to submit a request to any Federal agency from a single website and includes additional tools to improve the customer experience. The U.S. Government will establish a FOIA task force that will review current practices, seek public input, and determine the best way to implement this consolidated FOIA service.
- **Develop Common FOIA Regulations and Practices for Federal Agencies.** Certain steps in the FOIA process are generally shared across Federal agencies. Standardizing these common aspects through a core FOIA regulation and common set of practices would make it easier for requesters to understand and navigate the FOIA process and easier for the Government to keep regulations up to date. The Administration will initiate an interagency process to determine the feasibility and the potential content of a core FOIA regulation that is both applicable to all agencies and retains flexibility for agency-specific requirements.
- **Improve Internal Agency FOIA Processes.** Over the past few years, several agencies have analyzed existing FOIA practices and used this information to make dramatic improvements in their backlogs and processing times, as well as to increase the proactive release of information in the public interest. The U.S. Government will scale these targeted efforts to improve the efficiency of agencies with the biggest backlogs, and to share lessons learned to further improve internal agency FOIA processes.

- **Establish a FOIA Modernization Advisory Committee.** Improvements to FOIA administration must take into account the views and interests of both requesters and the Government. The United States will establish a formal FOIA Advisory Committee, comprised of government and non-governmental members of the FOIA community, to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures.
- **Improve FOIA Training Across Government to Increase Efficiency.** In order to efficiently and effectively respond to FOIA requests, every Federal employee — not just those in an agency's FOIA office — should fully understand the FOIA process. The Administration will make standard e-learning training resources available for FOIA professionals and other Federal employees and encourage their use.

4. Transform the Security Classification System

While national security requires that certain information be protected as classified, democratic principles simultaneously require government to be transparent — wherever possible — about its activities. Overclassification may have high costs and operational impacts on agencies. Classification must therefore be kept to the minimum required to meet national security needs, and information should be made available to the public through proper declassification once the need for protecting the information has passed. In continuation of our efforts to transform the classification system and declassify as much material as possible, while simultaneously protecting national security, the Administration will:

- **Create a Security Classification Reform Committee.** The Public Interest Declassification Board, an advisory committee made up of experts outside government as well as former government classification experts, has made several recommendations for reducing overclassification and simplifying the classification system in its report, [*Transforming the Security Classification System*](#). The interagency Classification Review Committee, which will report to the Assistant to the President for Homeland Security and Counterterrorism, will review these recommendations, coordinate efforts to implement those that are accepted, and meet periodically with external stakeholders to obtain their input as appropriate.
- **Systematically Review and Declassify Historical Data on Nuclear Activities.** The Classification Review Committee will work with the Department of Defense, Department of Energy, Office of the Director of National Intelligence, and Department of State to determine, consistent with applicable statutes, how to implement a systematic review process for the declassification of no-longer sensitive historical information on nuclear programs (Formerly Restricted Data or FRD), focusing on specific events and topics of historical nuclear policy interest and ways for the public to help identify priorities for declassification review.
- **Pilot Technological Tools to Analyze Classified Presidential Records.** The Central Intelligence Agency and NARA will pilot the use of new tools to provide classification reviewers with search

capability for unstructured data and automate initial document analysis, beginning with Presidential Records from the Reagan Administration's classified e-mail system.

- **Implement Monitoring and Tracking of Declassification Reviews.** The National Declassification Center at NARA will implement a referral and tracking system that will automatically notify appropriate agency representatives when classified records are ready for declassification review and enable monitoring to ensure that agencies meet review deadlines. This system will include records of Presidential Libraries.

5. Implement the Controlled Unclassified Information Program

The Government currently uses ad hoc, agency-specific policies, procedures, and markings to safeguard and protect certain controlled unclassified information (CUI), such as information that involves privacy, security, proprietary business interests, and law enforcement investigations. This patchwork of policies has resulted in inconsistent marking and safeguarding of documents, unclear or unnecessarily restrictive dissemination policies, and impediments to authorized information sharing. The President therefore directed NARA to establish a program to standardize processes and procedures for managing CUI. Over the next year, NARA will issue implementation guidance, with phased implementation schedules, and an enhanced CUI Registry that designates what information falls under the program.

6. Increase Transparency of Foreign Intelligence Surveillance Activities

In June 2013, the President directed the U.S. Intelligence Community to declassify and make public as much information as possible about certain sensitive intelligence collection programs undertaken under the authority of the Foreign Intelligence Surveillance Act (FISA), while being mindful of the need to protect national security. Nearly two thousand pages of documents have since been released, including materials that were provided to Congress in conjunction with its oversight and reauthorization of these authorities. As information is declassified, the U.S. Intelligence Community is [posting online](#) materials and other information relevant to FISA, the FISA Court, and oversight and compliance efforts. The Administration has further committed to:

- **Share Data on the Use of National Security Legal Authorities.** The Administration will release annual public reports on the U.S. Government's use of certain national security authorities. These reports will include the total number of orders issued during the prior twelve-month period and the number of targets affected by them.
- **Review and Declassify Information Regarding Foreign Intelligence Surveillance Programs.** The Director of National Intelligence will continue to review and, where appropriate, declassify information related to foreign intelligence surveillance programs.
- **Consult with Stakeholders.** The Administration will continue to engage with a broad group of stakeholders and seek input from the Privacy and Civil Liberties Oversight Board to ensure the Government appropriately protects privacy and civil liberties while simultaneously safeguarding national security.

7. Make Privacy Compliance Information More Accessible

As data increasingly help drive efficiency and effectiveness of public services, public trust in the Government's good stewardship of data is essential. The Federal Government has a dedicated workforce that has long worked to ensure the proper management and security of personal information held by Federal agencies. Agencies are required to routinely review, assess, and publicly report on their collection and use of personal information. To improve transparency and accountability of Federal data collection, the Administration will:

- **Improve the Accessibility of Privacy Policies and Compliance Reports.** To make it easier for citizens to find and understand what information the Government collects and maintains, Federal agencies will make it easier for the public to access, download, and search online for publicly-available privacy policies and privacy compliance reports.
- **Update and Improve Reporting on Federal Agency Data Policies and Practices.** Agencies will collaborate to review the content of publicly-available privacy compliance reports and to consider best practices to ensure that the reports provide meaningful information about the Federal Government's management of personal information.

8. Support and Improve Agency Implementation of Open Government Plans

The Office of Management and Budget and the Office of Science and Technology Policy will work with an existing interagency open government group, made up of individuals from across the Executive Branch, to develop guidelines for Federal agencies as they work to update their Open Government Plans in the coming months. These guidelines will require, at a minimum, new measures on proactive disclosures. The interagency group will solicit input from civil society organizations for these guidelines and will work to ensure robust implementation of the agency plans in accordance with the [Open Government Directive](#).

9. Strengthen and Expand Whistleblower Protections for Government Personnel

Employees with the courage to report wrongdoing through appropriate, legally authorized channels are a government's best defense against waste, fraud, and abuse. Federal law prohibits retaliation against most government employees and contractors who act as whistleblowers, and those protections were strengthened by recent legislation and Executive action. However, some who work for the Government still have diminished statutory protections. The Government must also ensure that Federal employees know their rights. Therefore, the Administration will:

- **Mandate Participation in the Office of Special Counsel Whistleblower Certification Program.** To ensure that Federal employees understand their whistleblower rights and how to make protected disclosures, the Administration will require covered agencies to complete the U.S. Office of Special Counsel's program to certify compliance with the Whistleblower Protection Act's notification requirements.
- **Implement the Presidential Directive on Protecting Whistleblowers.** The U.S. Government will continue to work to implement the President's October 2012 Policy Directive on Protecting

Whistleblowers with Access to Classified Information ([PPD-19](#)), including by ensuring strong, independent due process procedures; awareness of protections; and agency understanding of the protections available to government contractors under the directive.

- **Advocate for Legislation to Expand Whistleblower Protections.** With the Administration's support, Congress recently enacted legislation to strengthen whistleblower protections for most Federal Government employees and contractors, but there are still gaps in statutory protections available to certain government employees and contractors. The Administration will continue to work with Congress to enact appropriate legislation to protect these individuals.
- **Explore Executive Authority to Expand Whistleblower Protections if Congress Does Not Act.** While statutory protections are preferable, the Administration will explore additional options for utilizing Executive authority to further strengthen and expand whistleblower protections if Congress fails to act further.

10. Increase Transparency of Legal Entities Formed in the United States

The United States has been working closely with partners around the world to combat the criminal misuse of businesses, shell companies, and front companies. These legal entities are used to access the international financial system and facilitate financial crime, while masking the true identity of illicit actors. These legal entities are also used by individuals and companies to shelter assets and evade taxes. Enhanced transparency of companies formed in the United States will help to prevent criminal organizations from obscuring who really benefits from the businesses they operate, help to address tax avoidance, and also help developing countries to combat corruption when criminal actors look to illicitly deposit their money abroad. To promote transparency in company ownership, the Administration will:

- **Advocate for Legislation Requiring Meaningful Disclosure.** The White House will continue to publicly advocate for legislation requiring disclosure of meaningful information at the time a company is formed, showing not just who owns the company, but also who receives financial benefits from the entity.
- **Establish an Explicit Customer Due Diligence Obligation for U.S. Financial Institutions.** In 2014, the Administration will work to enact a rule requiring U.S. financial institutions to identify the beneficial owners of companies that are legal entities. The Treasury Department is currently engaged in rulemaking to clarify customer due diligence requirements for U.S. financial institutions. The agency has received public comments through an Advance Notice of Rulemaking and also hosted several stakeholder roundtables.

Open Government to Manage Resources More Effectively

1. Implement the Extractive Industries Transparency Initiative

Two years ago, at the launch of the OGP, President Obama announced the U.S. commitment to implement the Extractive Industries Transparency Initiative (EITI), an international standard aimed at increasing transparency and accountability in the payments that companies make and the revenues governments receive for their natural resources. The United States has actively worked toward increasing revenue transparency and accountability in relevant industry sectors, ensuring that American taxpayers receive every dollar due for the extraction of the Nation's natural resources.

The United States continues to work toward EITI candidacy, including by seeking public comment and feedback on the Federal Government's candidacy application. The Administration intends to publish the first United States EITI report in 2015 and to achieve EITI compliance in 2016. The United States will also:

- Disclose additional revenues on geothermal and renewable energy;
- Unilaterally disclose all payments received by the U.S. Department of Interior;
- Create a process to discuss future disclosure of timber revenues; and
- Promote the development of innovative open data tools that make extractive data more meaningful for and accessible to the American people.

2. Make Fossil Fuel Subsidies More Transparent

Regular public reporting on U.S. Government spending on fossil fuel subsidies will increase transparency and enhance accountability. The United States will publicly publish an annual report outlining Government spending on fossil fuel subsidies and share it with the Group of 20 (G-20) and other relevant international bodies.

3. Increase Transparency in Spending

The Administration's efforts to increase transparency in Federal spending have opened up new data on Federal procurement and financial assistance. The Administration intends to further increase the transparency of where Federal tax dollars are spent by committing to:

- **Join the Global Initiative on Fiscal Transparency.** The United States will join the Global Initiative on Fiscal Transparency (GIFT), an international network of governments and non-government organizations aimed at enhancing financial transparency, accountability, and stakeholder engagement. The Administration will actively participate in the GIFT Working Group and seek opportunities to work with others to champion fiscal openness in appropriate global forums.
- **Regularly Engage with External Stakeholders.** The U.S. Government will hold quarterly meetings with external stakeholders to identify and prioritize ways to improve the usability and functionality of the USASpending.gov website.

- **Open Up Federal Spending Data.** The U.S. Government will make Federal spending data more easily available in open and machine-readable formats.
- **Publish Additional Federal Contracting Data.** The Administration will facilitate the publication of certain Federal Government contract information not currently available in order to increase transparency and accountability of the Federal procurement system. Information will be made available consistent with Federal rulemaking procedures.
- **Provide Strategic Direction for Enhancing Fiscal Transparency.** The Administration, through the work of the Government Accountability and Transparency Board (GATB), will continue to provide strategic direction to the Federal Government on ways to increase Federal spending transparency and to detect waste, fraud, or abuse. GATB will update its annual plan with 2013 accomplishments and 2014 objectives including issues of data analytics and data integrity and standardization for procurement and grants.

4. Increase Transparency of Foreign Assistance

Greater foreign aid transparency promotes effective development by helping recipient governments manage their aid flows and by empowering citizens to hold governments accountable for the use of foreign assistance. Increased transparency also supports evidence-based, data-driven approaches to foreign aid. As outlined in past OMB guidance to Federal agencies, by December 2015, agencies managing or implementing U.S. foreign assistance will establish an automated and timely process for publishing foreign aid data to ForeignAssistance.gov. Throughout 2014, the United States Agency for International Development, the Department of State, Department of Health and Human Services, Department of Agriculture, Department of Defense, Department of Treasury, and other agencies will work to add or expand detailed, timely, and high-quality foreign assistance data to ForeignAssistance.gov. The Department of State, as the lead agency for the U.S. government on this issue, will also continue to engage civil society organizations and the public online about the content and the use of the data on the website.

5. Continue to Improve Performance.Gov

Performance.gov provides a window to the public on the Administration's efforts to create a government that is more effective, efficient, innovative, and responsive. The Federal Government improved the website by publishing regular progress updates on agency and cross-agency goals. In 2014, the Federal Government will add new performance goals with implementation strategies as well as enhanced website functionality, such as data exports, to make the information more accessible and useable.

6. Consolidate Import and Export Systems to Curb Corruption

The Administration will develop guidelines for directing the consolidation of United States import/export systems to a "single window" platform to streamline business and regulatory transactions, promote transparency, and keep America competitive, safe, and secure.

7. Promote Public Participation in Community Spending Decisions

Participatory budgeting allows citizens to play a key role in identifying, discussing, and prioritizing public spending projects, and gives them a voice in how taxpayer dollars are spent. Several communities around the country, such as Chicago, New York, San Francisco, and Vallejo, already have had success in, or are currently planning, participatory budgeting processes to help determine local budgeting priorities. One way participatory budgeting can be utilized by cities is through eligible Department of Housing and Urban Development Housing and Community Development funds, which can be used to promote affordable housing, provide services to the most vulnerable citizens, and create jobs through the expansion and retention of businesses. In 2014, the Administration will work in collaboration with the Strong Cities, Strong Communities initiative (SC2), the National League of Cities, non-profit organizations, philanthropies, and interested cities to: create tools and best practices that communities can use to implement projects; raise awareness among other American communities that participatory budgeting can be used to help determine local investment priorities; and help educate communities on participatory budgeting and its benefits.

8. Expand Visa Sanctions to Combat Corruption

In early 2014, the U.S. Government will launch an interagency process to explore ways to strengthen U.S. efforts to deny safe haven to corrupt individuals. These efforts include the possibility of strengthening the Presidential Proclamation that denies safe haven in the United States to those who have committed, participated in, or were beneficiaries of corrupt practices in performing public functions. Although this 2004 Proclamation has proven useful in denying safe haven to kleptocrats and their associates and families, experience with its enforcement has revealed several potential areas for enhancement that the Administration will continue to explore.

Open Government to Improve Public Services

1. Further Expand Public Participation in the Development of Regulations

The Administration continues to promote public participation in rulemaking, which covers such diverse subjects as energy, education, homeland security, agriculture, food safety, environmental protection, health care, and airline and automobile safety. Regulations.gov and a related underlying electronic Federal Docket Management System (FDMS) support the rulemaking processes at most Administration and many independent regulatory agencies, and are designed to make it easier for the public to comment on proposed regulations and for government agencies to post those proposed rules online. The online platform currently allows the public to view and comment on proposed rules, and includes associated data in the docket that can be searched and downloaded. The Administration will:

- **Make Commenting on Proposed Rulemakings Easier.** The eRulemaking Program Management Office (PMO), which leads Regulations.gov and the FDMS, will explore launching an API to allow the public to comment on proposed regulations using third-party websites.
- **Continue Proactive Outreach with Stakeholders.** To be responsive to non-government users of Regulations.gov, the PMO will continue to proactively engage and meet with outside

stakeholder groups to obtain input on how best to improve the website.

- **Make Regulations Easier to Read.** The Consumer Financial Protection Bureau launched [an open source pilot](#) to make regulations easier to read and understand. Based on the performance of the pilot, the model will be considered for potential expansion to other agencies.

2. **Open Data to the Public**

Open Data fuels innovation that grows the economy and advances government transparency and accountability. Government data has been used by journalists to uncover variations in hospital billings, by citizens to learn more about the social services provided by charities in their communities, and by entrepreneurs building new software tools to help farmers plan and manage their crops. Building upon the successful implementation of open data commitments in the first NAP, the second NAP will include commitments to make government data more accessible and useful for the public. Through these commitments, the United States will:

- **Manage Government Data as a Strategic Asset.** In an effort to make U.S. Government data more accessible and useful, Federal agencies will develop an inventory of their data and publish a list of datasets that are public or can be made public. Agencies will also develop new mechanisms to solicit public feedback regarding open government data.
- **Launch an Improved Data.gov.** Data.gov allows the public to easily find, download, and use data collected or created by the Federal Government. The United States will launch a new version of Data.gov to make it even easier to discover, understand, and use open government data. The new Data.gov will index all Federal agency datasets in one easy-to-use catalog. This new website will help developers, researchers, journalists, and other stakeholders find data and will help the public more easily find tools and resources to access Government services.
- **Open Agriculture and Nutrition Data.** Global development, agriculture, and health have been a key focus of the Administration's Open Data Initiatives. To expand these efforts internationally, the United States, in partnership with the United Kingdom, established the Global Open Data on Agriculture and Nutrition (GODAN). GODAN aims to increase the quality, quantity, and timeliness of available data to support agriculture and nutrition efforts — as well as to increase the number and diversity of stakeholders who are applying data-based solutions to improve agriculture and nutrition. This initiative will support public and private global efforts to make agriculture and nutrition data more available and easier to access. The United States will create an interagency group that will promote open data efforts in the public and private sectors and encourage new efforts to release agriculture and nutrition data.
- **Open Natural Disaster-Related Data to Support Response and Recovery Efforts.** Government data is used to help first responders and survivors make better-informed decisions during the chaos of a natural disaster. Expanding the amount of natural disaster-related open government data will increase awareness of the effects of natural disasters and improve disaster relief and recovery efforts. FEMA, through its [OpenFEMA](#) initiative, will release new disaster-

related data in a machine-readable format and host workshops to build tools that support first responders, survivors, and impacted communities.

3. Continue to Pilot Expert Networking Platforms

Expert networking platforms offer the potential for Government officials to find and connect with Federal colleagues, academic researchers, or members of the general public that have specialized skills or unique expertise. The pilot program ExpertNet, launched by the Food and Drug Administration to connect Federal experts with each other and with citizens who have expertise on a pertinent topic, will be expanded in 2014. The Environmental Protection Agency and U.S. Department of Agriculture are also working to leverage a similar networking platform to enable collaboration and discovery among researchers and scientists. The Administration will work with the research community to assess the impact of expert networking and will convene agencies to identify best practices.

4. Reform Government Websites

More citizens seek government information through the internet than any other source. In addition to continuing to be accessible, government websites should be easy to find, use, and navigate. The Administration will continue to work to implement its [Digital Government Strategy](#) to improve Federal websites and to promote a more citizen-centered government. These efforts will include revising and updating OMB policies for Federal Agency websites in 2014.

5. Promote Innovation Through Collaboration and Harness the Ingenuity of the American Public

Creating a more Open Government and addressing our Nation's most challenging issues requires an informed and active citizenry. Recognizing the value of the American public as a strategic partner in addressing some of the country's most pressing challenges, the United States will work to more effectively harness the expertise, ingenuity, and creativity of the American public by enabling, accelerating, and scaling the use of open innovation methods across the Federal Government, including commitments to:

- **Create an Open Innovation Toolkit.** In 2014, the Administration will convene an interagency group to develop an "open innovation toolkit" for Federal agencies that will include best practices, training, policies, and guidance on authorities related to open innovation, including approaches such as incentive prizes, crowdsourcing, and citizen science.
- **New Incentive Prizes and Challenges on Challenge.gov.** The U.S. Government champions the use of challenges, prizes, and competitions to catalyze breakthroughs in national priorities. Launched on September 2010, Challenge.gov has hosted more than 300 crowdsourcing competitions, and the platform has been used by more than 50 Federal departments and agencies. The website will continue to provide public listings of new competitions offered by the Administration to engage citizens in solving difficult problems to help agencies achieve their missions.
- **Increased Crowdsourcing and Citizen Science Programs.** Public participation in scientific research, one type of crowdsourcing known as "citizen science", allows the public to make

critical contributions to the fields of science, technology, engineering, and math by collecting, analyzing, and sharing a wide range of data. The Administration will expand its use of crowdsourcing and citizen science programs to further engage the public in problem-solving. For example, the National Aeronautics and Space Administration (NASA) will seek to drastically increase the number of asteroid observations by the amateur astronomer community as part of the Asteroid Grand Challenge. NASA will also launch the third International Space Apps Challenge in 2014, building upon the previously successful International Space Apps Challenges to continue to use publicly-released data to solve global challenges. In addition, the Environmental Protection Agency will expand its citizen science activities, such as leveraging crowdsourcing to monitor water quality; NARA will increase its citizen archivist crowdsourcing projects that make records more accessible online to include captioning of historical films and transcription of other Federal records by the public; and the U.S. Geological Survey will expand its National Map Corps program to use public input to improve the National Map.

Conclusion

In the months ahead, the U.S. Government will continue to work with partners in government, as well as the public and civil society organizations, to implement these commitments and to continue to build toward a more open, transparent, and participatory United States Government. The Obama Administration remains fully committed to building a 21st-Century Open Government and fundamentally improving the relationship between citizens and government, as demonstrated by the significant progress made in the United States' first two years as a member of the Open Government Partnership.

THE FOIA POST  



New Agency Best Practices Workshop Series for Improving FOIA Administration

January 24, 2014 Posted by [The Office of Information Policy](#)

As part of the [Second Open Government National Action Plan](#)'s commitment to modernizing FOIA and improving internal agency FOIA processes, we will be holding a series of agency *Best Practices* workshops beginning this Spring. Each workshop will focus on a specific topic and will include a panel of agency representatives sharing their success stories and strategies. Through these workshops agencies can learn from one another and leverage the successes of other agencies in their own organization for the overall benefit of FOIA administration across the government.

As the Attorney General emphasized in his [FOIA Guidelines](#), the “responsibility for effective FOIA administration belongs to all of us . . . [and] [w]e all must do our part to ensure open government.” Embracing the [Attorney General’s FOIA Guidelines](#), over the past few years many agencies have analyzed their existing FOIA practices and found ways to improve different areas of their FOIA administration such as reducing backlogs, improving processing times, increasing proactive disclosures, using technology, and improving customer service.

This new *Best Practices Workshop* series is designed to share the lessons learned across agencies in improving their FOIA administration, many of which are described each year in agency [Chief FOIA Officer Reports](#). Each workshop will focus on a specific FOIA topic, such as reducing backlogs, and will highlight a panel of agencies that have had success in that area. Tips and best practices discussed during these workshops, as well as feedback from workshop participants will then be published online so that all agencies can use them as a resource for improvement.

Specific details regarding these workshops, including time, location and topic will be announced prior to each session here on [FOIA Post](#) and through OIP’s Twitter account, [@FOIAPost](#). As we work to establish this new series of workshops, we invite you to suggest discussion topics. Also please let us know if you would like to participate as an agency representative on a panel or would like to identify any other agencies that have had successes in any area of FOIA administration that should be included on a panel. Please e-mail your suggestions to us at DOJ.OIP.FOIA@usdoj.gov using the subject line “Agency Best Practices Workshop Suggestion.”

POSTED IN: [FOIA Post](#), [Office of Information Policy](#), [Open Government](#) | [PERMALINK](#)



Kicking Off the New Agency Best Practices Workshop Series

April 23, 2014 Posted by The Office of Information Policy

Earlier this year, OIP announced the creation of a new series of agency *Best Practices* workshops as a part of the **Second Open Government National Action Plan's** commitment to modernizing FOIA and improving the FOIA process at agencies. Today, we are pleased to announce the first slate of topics and details for this new series of workshops.

Each of the scheduled workshops focuses on a specific topic and will include a panel of agency representatives who will share their success stories and strategies. The series is an opportunity for FOIA professionals to learn from one another and leverage the successes of others in their own organizations for the overall benefit of FOIA administration across the government.

Each workshop in the series is open to all agency FOIA professionals and interested agency personnel. Representatives from civil society will be invited to participate in certain workshops as well. The dates and topics for the first set of workshops are:

Reducing Backlogs and Improving Timeliness

May 20, 2014, 10:00 am – 12 noon

Proactive Disclosures & Making Online Information More Useful

July 17, 2014, 10:00 am – 12 noon

Best Practices from the Requester's Perspective

October 15, 2014, 10:00 am – 12 noon

Implementing Technology to Improve FOIA Processing

December 9, 2014, 10:00 am – 12 noon

Customer Service & Dispute Resolution

February 11 2015, 10:00 am – 12 noon

All meetings will be held in the Great Hall of the Department of Justice's Robert F. Kennedy Building (10th and Constitution Ave., NW). Registration is required to attend and you will need a picture ID to enter the building for any of these meetings.

The May, July, December, and February meetings will feature different panels of agency representatives highlighting successes and lessons on the specific topics. The October meeting will feature a panel from the open government and requester community, highlighting some of the agency best practices they have experienced while working through the FOIA process with agencies. As previously announced, tips and topics discussed during these workshops, as well as feedback from workshop participants, will be published on OIP's website after each meeting as a resource for all agencies.

If you are interested in attending any of these events, you can register by e-mailing your name and phone number to OIP's Training Officer at DOJ.OIP.FOIA@usdoj.gov with the subject line "[Month] Best Practices Workshop." If you have any questions regarding the series, please contact OIP's Training Officer at (202) 514-3642.

As the Attorney General emphasized in his [FOIA Guidelines](#), the "responsibility for effective FOIA administration belongs to all of us . . . [and] [w]e all must do our part to ensure open government." This new workshop series is designed to share lessons learned across agencies in an effort to improve the administration of the FOIA across the government.

As we hold these meetings, we continue to invite your suggestions on future meeting topics and potential panelists. If you would like to participate as a panelist or recommend someone for any of the above scheduled workshops, please e-mail us at DOJ.OIP.FOIA@usdoj.gov with the subject line "Best Practices Workshop Suggestion."

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The Freedom of Information Act, 5 U.S.C. § 552 As Amended By Public Law No. 110-175, 121 Stat. 2524

Below is the full text of the Freedom of Information Act in a form showing all amendments to the statute made by the “Openness Promotes Effectiveness in our National Government Act of 2007.” All newly enacted provisions are in boldface type.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ‘news’ means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ‘news’) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is

likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request. [Effective one year from date of enactment]

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the

person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

[Effective one year from date of enactment]

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. **To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. [Effective one year from date of enactment].** Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests— (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means—

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—
(i) the date on which the agency originally received the request; and
(ii) an estimated date on which the agency will complete action on the request.

[Effective one year from date of enactment]

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, **and the exemption under which the deletion is made**, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, **and the exemption under which the deletion is made**, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), **the number of occasions on which each statute was relied upon**, a description of whether a court has upheld the decision of the agency to withhold information under

each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median **and average** number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, **based on the date on which the requests were received by the agency;**

(F) **the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;**

(G) **based on the number of business days that have elapsed since each request was originally received by the agency—**

(i) **the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;**

(ii) **the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;**

(iii) **the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and**

(iv) **the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;**

(H) **the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;**

(I) **the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;**

(J) **data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;**

(K) **data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;**

(L) **the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;**

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

~~(F)~~(N) the total amount of fees collected by the agency for processing requests; and

~~(G)~~(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

~~(2)~~(3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. **In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.**

~~(3)~~(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

~~(4)~~(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

~~(5)~~(6) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

~~(2)~~“record and any other term used in this section in reference to information ~~includes any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format.~~

(2) ‘record’ and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) recommend policy changes to Congress and the President to improve the administration of this section.

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

(1) have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and

(6) designate one or more FOIA Public Liaisons.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.



OGIS Recommendations to Improve the FOIA Process

The Freedom of Information Act (FOIA) directs that the Office of Government Services (OGIS) to recommend to Congress and the President actions to improve FOIA administration, 5 U.S.C. § 552(h)(2)(C). OGIS has made a total of 11 recommendations aimed at improving the FOIA process—five in 2012, four in 2013 and two in 2014. Seven of the recommendations are specific to actions that OGIS believes it should take (in certain cases in conjunction with agency partners and other stakeholders), while two of the recommendations focus on actions to be taken by other federal agencies. The remaining two recommend White House action.

Specifically, OGIS recommended the following actions that it had either taken or was planning to take in its role of improving the FOIA process government-wide:

- Work to encourage other departments and agencies to partner with OGIS to expand dispute resolution training for their FOIA professionals so that they can assist their FOIA colleagues in preventing and resolving disputes. (2012)
- Work with other agencies to consider how a governmentwide FOIA web portal could improve public access to government information and to save taxpayers' money by sharing agency technology. (2012)
- Facilitate the coordination of interagency communication among agencies regarding multi-agency FOIA requests by OGIS serving as the central point-of-contact for agencies in sharing information, and for relaying information to requesters as appropriate. (2012)
- Develop, with the Chief Information Officers Council, methods for agencies regarding requesters seeking their own records under the Privacy Act to improve how requesters navigate agency processes to obtain needed assistance. (2012)
- Work with the Office of Management and Budget (OMB) to create a governmentwide Privacy Act routine-use procedure to streamline the way in which agencies share with OGIS information about FOIA requests that is covered by the Privacy Act. (2012)
- Work with stakeholders from both inside and outside government to review the issues surrounding FOIA fees and fee waivers, which remain a persistent point of contention administratively and in litigation. (2013)

- Work with agencies to streamline the process of requesting immigration-related records because of the increased number of requests related to these records. (2013)

OGIS also recommended that federal agencies take the following actions:

- Encourage and support the use of dispute resolution in the agency FOIA processes to prevent and resolve disputes administratively and avoid litigation. (2013)
- Remind all staff of the importance of FOIA and recognize FOIA as a priority and everyone's responsibility by, among other actions, providing day-one training to all new employees as part of traditional agency orientation. (2013)

OGIS recommended that the White House take the following two actions:

- Issue a Memorandum to Agency General Counsels and Chief FOIA Officers that focuses on exemplary customer service for a better FOIA process with particular attention to the importance of embedding Alternative Dispute Resolution (ADR) into the FOIA process and supporting FOIA Public Liaisons in their statutory role of assisting in resolving disputes between FOIA requesters and Federal agencies, 5 U.S.C. §§ 552(a)(6)(B)(ii) and 552(l). (2014)
- Work with OGIS's parent agency, the National Archives and Records Administration, the Office of Management and Budget, and the Department of Justice on a program to ensure that FOIA requirements are incorporated into the information technology procurement process to ensure efficient and effective searches for records in response to FOIA requests for the information contained in those records, and proactive disclosure of the information or data. (2014)

National Archives and Records Administration

Freedom of Information Act Advisory Committee

Charter

1. Committee's Official Designation: The name of this advisory committee shall be the Freedom of Information Act Advisory Committee.

2. Authority: The Committee is being established in accordance with the second United States Open Government National Action Plan released on December 5, 2013, and the directive in the Freedom of Information Act, 5 U.S.C. § 552(h)(1)(C), that the Office of Government Information Services within the National Archives and Records Administration (NARA) "recommend policy changes ... to improve" the Freedom of Information Act (FOIA) administration. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

3. Objectives and Scope of Activities: As part of the Open Government Partnership, the United States issued its second Open Government National Action Plan on December 5, 2013, that sets forth several specific initiatives the Administration would undertake in the coming two years. One flagship initiative includes various efforts to modernize FOIA, including creation of a FOIA Federal Advisory Committee to be "comprised of government and non-governmental members of the FOIA community, to foster dialog between the Administration and the requester community, solicit public comments, and develop consensus recommendations for improving FOIA administration and proactive disclosures." This advisory committee shall serve as a deliberative body to advise on improvements to the administration of FOIA. The Committee will study the current FOIA landscape across the Executive Branch and may recommend legislative action, policy changes or executive action, among other matters.

4. Description of Duties: This committee will be advisory only.

5. Official(s) to Whom the Committee Reports: The committee shall report to the Archivist of the United States, and provide advice that is relevant to the administration of FOIA across the executive branch.

6. Support: The NARA Office of Government Information Services will provide funding and administrative support for the Committee to the extent permitted by law and within existing appropriations.

7. Estimated Annual Operating Costs and Staff Years: The annual operating cost for the Committee is estimated to be \$90,000 and one full staff year.

8. Designated Federal Officer (DFO): The DFO is a full-time salaried employee of NARA and will perform the duties set forth in § 102-3.120 of the FACA Final Rule. The Archivist of the United States shall designate a DFO who shall manage the Committee and provide such clerical, administrative, and logistical support as necessary for the Committee to effectively conduct its business. The DFO shall ensure the Committee complies with the requirements of the Open

Government National Action Plan, this Charter, relevant Federal regulations, and NARA's policies on committee management. Specifically, the DFO will:

- Develop agenda items in close consultation with the Chairperson;
- Assist in developing plans for the activities of the Committee and Subcommittees;
- Call the Committee meetings and notify members of the meetings;
- Notify NARA's ethics officer of the appointment of new Federal employee members and ensure that financial disclosure requirements have been satisfied by new members prior to their first participation in Committee meetings; and
- Maintain records of Committee activities.

9. Estimated Number and Frequency of Meetings: In consultation with the Archivist of the United States, the DFO shall hold meetings up to four times per year and may call additional meetings as may be necessary.

10. Duration: The need for this Committee is continuing.

11. Termination: The Charter shall be eligible for renewal every two years.

12. Membership and Designation: The Committee will consist of no more than 20 individuals. To ensure balanced representation, NARA will strive to appoint equal numbers of government and non-governmental members. Government members of the Committee should include, at a minimum, three FOIA professionals from Cabinet-level Departments; four FOIA professionals from non-Cabinet agencies; one representative from the Department of Justice, Office of Information Policy; and one representative from NARA. Non-governmental members of the advisory committee will include, at a minimum, three individuals representing the interests of non-governmental organizations that advocate on FOIA matters; two individuals representing the interests of FOIA requesters who qualify for the "all other" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "news media" FOIA requester fee category; one individual representing the interests of requesters who qualify for the "commercial" FOIA requester fee category; one individual representing the interests of historians and history-related organizations; and one individual representing the interests of academia. The Designated Agency Ethics Official for NARA has determined that all non-Federal members of the Committee are "representatives" for purposes of federal ethics laws and regulations, and, thus, do not need to file financial disclosure annually. Any Federal employees who are appointed to the Committee must file a confidential financial disclosure report on or before the date of their first participation in a Committee meeting.

All members will be appointed by the Archivist of the United States.

There will be no compensation for members of the Committee. Travel and/or per diem costs will not be provided by NARA.

The Archivist of the United States shall appoint a Chairperson. If necessary, a Vice Chairperson may be designated annually by members of the Committee, in consultation with the Archivist of the United States. The Chairperson is the presiding officer of the Committee who guides its efforts to the effective completion of its assigned tasks. The Chairperson shall provide leadership and adhere to the Charter and such other rules of order and operating procedures as the Committee may adopt, maintain order, and conduct each meeting in accordance with FACA and

the prescribed rules and procedures. The Chairperson is responsible for certifying the accuracy of Committee meeting minutes. The Vice Chairperson shall assume and perform the duties of the Chairperson in the event the Chairperson is absent or unavailable.

13. Subcommittees: The Chairperson may, with NARA's approval, create subcommittees as necessary to support the committee's work. NARA may designate members from either the Committee or the public to serve on subcommittees. The subcommittee Chairperson shall be a Committee member.

14. Recordkeeping: The records of the committee and any subcommittee(s) shall be handled in accordance with General Records Schedule 26, Item 2 and any approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. § 552.

15. Filing Date: **MAY 20 2014**

Approved:



David S. Ferriero
Archivist of the United States

MAY 20 2014

Date

The Federal Advisory Committee Act (FACA) Brochure

An Overview

U.S. General Services Administration
Office of Governmentwide Policy
Committee Management Secretariat
Washington, DC 20417

Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse.

Today, an average of 1,000 advisory committees with more than 60,000 members advise the President and the Executive Branch on such issues as the disposal of high-level nuclear waste, the depletion of atmospheric ozone, the national fight against Acquired Immune Deficiency Syndrome (AIDS), efforts to rid the Nation of illegal drugs, to improve schools, highways, and housing, and on other major programs.

Through enactment of the Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463), the U.S. Congress formally recognized the merits of seeking the advice and assistance of our nation's citizens. At the same time, the Congress also sought to assure that advisory committees:

- Provide advice that is relevant, objective, and open to the public;
- Act promptly to complete their work; and
- Comply with reasonable cost controls and record keeping requirements.

Role of Federal Advisory Committees

With the expertise from advisory committee members, federal officials and the nation have access to information and advice on a broad range of issues affecting federal policies and programs. The public, in return, is afforded an opportunity to provide input into a process that may form the basis for government decisions.

Federal Agency Responsibility

Each federal agency that sponsors advisory committees must adhere to the requirements established by the FACA, as well as regulations promulgated by the U.S. General Services Administration's (GSA) Committee Management Secretariat. GSA has had the responsibility for overseeing the FACA since 1977.

GSA's Role Under the FACA

With approximately 1,000 advisory committees in existence at any given time, special attention is required to assure compliance with the FACA, the Freedom of Information Act, and related regulations, as well as to encourage effective and efficient use of committee resources.

While executive branch departments and agencies are responsible for continually reviewing committee performance and compliance in these areas, the General Services Administration was designated by the President in 1977 to monitor committee activities government-wide. As part of this responsibility, GSA:

- Conducts annual reviews of advisory committee activities and accomplishments;
- Responds to requests from agencies on establishing new committees or the renewal of existing groups; and
- Maintains a FACA database on the internet from which advisory committee information may be obtained.

Together, GSA and the federal community work to eliminate the overlap or duplication of advisory bodies, terminate unnecessary or inactive committees, and develop committee management regulations, guidelines, and training in response to requirements of the Executive Branch and Congress.

Complying with FACA

Any advisory group, with limited exceptions, that is established or utilized by a federal agency and that has at least one member who is not a federal employee, must comply with the FACA. To find out if a group comes under the FACA, contact the sponsoring agency's Committee Management Officer. The GSA Committee Management Secretariat is an additional resource (see the last section "[For More Information...](#)").

Requirements for Establishing and Managing Advisory Committees

Under the Federal Advisory Committee Act, advisory committees can be created only when they are essential to the performance of a duty or responsibility conveyed upon the executive branch by law or Presidential Directive. Before committees can be set up, high-level officials within the sponsoring agency must review and approve the request. Once a committee is approved, a charter is prepared outlining the committee's mission and specific duties and forwarded to GSA's Committee Management Secretariat for final review. Following a required public notification period, and the filing of the charter with Congress, the committee may begin operation.

Committee Management Officer and Designated Federal Officer

The Federal Advisory Committee Act also provides that each agency sponsoring a federal advisory committee must appoint a Committee Management Officer to oversee the administration of the Act's requirements.

In addition, a Designated Federal Officer must be assigned to each committee to:

- Ensure compliance with FACA, and any other applicable laws and regulations;
- Call, attend, and adjourn committee meetings;
- Approve agendas;
- Maintain required records on costs and membership;
- Ensure efficient operations;
- Maintain records for availability to the public; and
- Provide copies of committee reports to the Committee Management Officer for forwarding to the Library of Congress.

Expiration of a Committee's Charter

Unless the renewal of a committee charter is justified under the FACA, the charter automatically expires after a two-year period (or as otherwise provided by law).

Advisory Committee Members

Federal advisory committee members are drawn from nearly every occupational and industry group and geographical section of the United States and its territories. The FACA requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed."

As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. In balancing committee memberships, agencies are expected to consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and function of the advisory committee.

Appointing Committee Members

Agency officials, members of Congress, the general public, or professional societies or current and former committee members may nominate potential candidates for membership on a committee.

Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Final selection is made by the president or heads of departments or agencies.

Prior to accepting an appointment with a federal advisory committee, each prospective member should clarify his/her role, obligations, duties, allowable expenses, compensation limitations, and any ethics requirements with their committee's Designated Federal Officer and/or Committee Management Officer, as appropriate.

Federal Ethics and Conflict of Interest Laws

Agency officials must provide prospective advisory committee members with information regarding any applicable standards of conduct-including those imposed by federal conflict of interest statutes. In some instances, members may be subject to special limitations during the course of their service on an advisory committee. For some members, these restrictions also may apply (for limited periods) after their committee assignments have ended.

Some agencies may impose additional administrative requirements as well. To avoid potential conflicts, each advisory committee member should assure that he or she receives adequate information from the sponsoring agency and completes any required appointment papers and disclosure forms prior to service on a committee.

Oral briefings and other explanatory material may be obtained through the sponsoring agency's Committee Management Officer, Designated Agency Ethics Official, or from the Office of Government Ethics, which has government-wide jurisdiction on federal ethics issues.

Limits on Membership Terms

Each agency may set limits (unless provided by law or Presidential Directive) on the lengths of terms for serving on advisory committees to allow for new membership.

Open Access to Committee Meetings and Operations

Under the provisions of the Federal Advisory Committee Act, federal agencies sponsoring advisory committees must:

- Arrange meetings that are reasonably accessible and at convenient locations and times;
- Publish adequate advance notice of meetings in the *Federal Register*;
- Open advisory committee meetings to the public (with some exceptions-see the section on "Government in the Sunshine Act" below);
- Make available for public inspection, subject to the Freedom of Information Act, papers and records, including detailed minutes of each meeting; and
- Maintain records of expenditures.

Government in the Sunshine Act

Advisory committee meetings may be closed or partially closed to the public based upon provisions of the Government in the Sunshine Act of 1976 (Public Law 94-409). Examples of meetings that may be closed under the FACA are:

- Those including discussions of classified information;
- Reviews of proprietary data submitted in support of Federal grant applications; and
- Deliberations involving considerations of personnel privacy.

[For More Information...](#)

For more information on the requirements of the Federal Advisory Committee Act, contact the General Services Administration's Committee Management Secretariat at cms@gsa.gov or via the internet at:

<http://www.gsa.gov/faca>; or

<http://www.gsa.gov/committeemanagement>

Examples of materials available on the Committee Management Secretariat website are:

- [Federal Advisory Committee Act](#)
- [GSA Final Rule on Federal Advisory Committee Management](#)
- [Guidance documents](#)
- [Access to the Federal Advisory Committee Act database](#)
- [Information on the Federal Advisory Committee Act Training course.](#)

Other materials, such as samples of nominating letters and committee reports, are available from each sponsoring agency.

Last Reviewed 2014-05-19



Federal Register

**Thursday,
July 19, 2001**

Part II

General Services Administration

**41 CFR Parts 101–6 and 102–3
Federal Advisory Committee Management;
Final Rule**

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This action is necessary due to legislative and policy changes that have occurred, and judicial decisions that have been issued since the regulation was last updated. It is based also on suggestions for improvement from other Federal agencies and interested parties, and clarifies how the regulation applies or does not apply to certain situations.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561, or electronically at the following Internet address: charles.howton@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's authority for administering the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. (also referred to as "the Act"), is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act. GSA's responsibilities for administering the Act have been delegated to the Associate Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997), GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional

comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on: (1) Suggested issues to address; (2) specific recommendations about changes needed in the current Federal Advisory Committee Management subpart; (3) examples of situations where FACA was either a useful tool or a hindrance to public involvement; and (4) GSA's intent to include illustrative examples and principles. On January 14, 2000, GSA published a proposed rule in the **Federal Register** (65 FR 2504) and requested comments over a 60-day period ending on March 14, 2000. All comments received were considered in drafting this final rule.

This final rule provides administrative and interpretive guidelines and management controls for Federal agencies to implement the provisions of the Act, and is intended to improve the management and operation of Federal advisory committees in the executive branch.

B. Discussion of Comments

Twenty-six commenters responded to the invitation for comments, including twenty commenters from the executive branch and six commenters from non-Federal sources. Of the twenty comments received from executive branch sources, three comments were submitted by subcomponents of a Federal department or agency. A total of fifty-nine specific issues or recommendations were identified, of which seven were either fully supportive of the proposed rule or concerned typographical errors. GSA addressed the disposition of the remaining fifty-two issues or recommendations as follows:

The Final Rule Should Include More Guidance Relating to the Management of Advisory Committees, Including the Impact of Other Statutes and Issues on Day-to-Day Operations

Several commenters provided suggestions regarding the addition of guidance on issues that, although not addressed by the Act, likely would improve the management of advisory committees. For example, one commenter suggested that the final rule include a provision to encourage agencies to streamline their internal processes and procedures in order to expedite the establishment of advisory committees. Other commenters requested that GSA: (1) Provide more detailed provisions on the compensation of advisory committee members and staff, and experts and consultants; (2) expand the range of

information required to be listed in an advisory committee's charter to include the nature and disposition of records; and (3) incorporate new regulatory requirements for increasing access to advisory committee information, such as providing meeting notices, minutes, and reports via the Internet.

In response to these recommendations, GSA expanded the number of examples included within the final rule to illustrate how other statutes or issues potentially could affect the effective management of advisory committees.

In addition, GSA reorganized the examples and other guidance into appendices to avoid any ambiguity between actions required by the Act and the final rule, and actions that are suggested only within an implementing framework of "best practices." In the final rule, a "Key Points and Principles" appendix appears at the end of each subpart to which it relates.

In applying the "best practices" offered in the appendices, users of the final rule should continue to examine the extent to which other factors, including agency-specific statutory provisions and internal agency procedures, may affect a specific advisory committee or program. Although GSA believes that the examples contained in the appendices to the final rule represent the circumstances most commonly encountered during the day-to-day management of advisory committees, the listing is not exhaustive and must be supplemented based upon the unique requirements of the user.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do To Comply With the Act

Many commenters expressed concern over language contained in the preamble to the proposed rule relating to coverage of subcommittees under the Act. The preamble to the proposed rule noted that:

The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 101–6.1007(b)(3).) This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type

of advisory committee that is subject to some, but not all of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

In evaluating the comments received, GSA notes that there were no objections to the exclusions contained in § 102-3.185 of the proposed rule (now § 102-3.160 of the final rule), relating to "What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?" The exclusions in § 102-3.160 of the final rule continue to cover the types of activities routinely performed by subcommittees. By this reasoning GSA sought to bring into harmony these activities with those provisions in the proposed rule differentiating subcommittees reporting to a parent advisory committee from those reporting directly to a Federal officer or agency.

However, the preamble to the proposed rule did not explain and describe adequately the legal framework for GSA's decision to differentiate subcommittees that report only to a parent advisory committee more clearly from advisory committees that report directly to a Federal officer or agency. The Act defines the term "advisory committee" as "any committee, * * * or any subcommittee or other subgroup thereof which is established or utilized by the President or an agency in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government". Under this definition, a subcommittee is an "advisory committee" subject to the Act if it provides advice to the President or a Federal officer or agency. Most subcommittees, however, report only to a parent advisory committee and it is the parent committee that is normally responsible for providing advice or recommendations to the Government. In this conventional scenario, the subcommittee is not subject to the Act because it is not providing advice to the Government.

Case law supports this conclusion. In *National Anti-Hunger Coalition v. Executive Committee*, 557 F.Supp. 524 (D.D.C.), *aff'd*, 711 F.2d 1071 (D.C. Cir. 1983), the question presented was whether the Act applied to task forces reporting to the Executive Committee of the President's Private Sector Survey on

Cost Control in the Federal Government. The task forces had no authority to make recommendations to agencies or to the President. Instead, their function was to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports." (557 F.Supp. at 526). Although it was undisputed that the Executive Committee was subject to the Act, the court held that the Act did not apply to the task forces under the following reasoning:

There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." The Act does not cover groups performing staff functions such as those performed by the so-called task forces. (557 F.Supp. at 529). (See also *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 898, 911-913 (D.C. Cir. 1993).)

GSA believes that as a result of this decision, subcommittees that report to a parent advisory committee generally are not subject to the Act. GSA also believes that subcommittees whose advice or recommendations are provided directly to a Federal officer or agency are subject to the Act. However, GSA further believes that this decision does not shield those subcommittees from coverage under the Act whose advice or recommendations are not subject to deliberation by their parent advisory committees.

From this reasoning, it is not permissible for parent advisory committees simply to "rubber-stamp" the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in, an advisory committee's deliberations. Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.

To address these issues more clearly, GSA strengthened language in the final rule by: (1) Adding a new § 102-3.35 that outlines policies relating to subcommittees; (2) clarifying language

in § 102-3.145 relating to subcommittee meetings; and (3) clarifying the examples contained in Appendix A to Subpart C.

Correct and Clarify the Definition of "Utilized"

Nine commenters recommended that GSA revise its definition of the term, "utilized" to conform to governing case law.

As noted by some of the commenters, the definition of the term "utilized" in § 102-3.30 of the proposed rule inadvertently misstated the applicable legal test. The proposed rule stated that a committee is "utilized within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation." This construction would require an agency both to have management of the committee and to exercise control over the committee before the committee can be deemed "utilized." The proper statement of the "utilized" test is whether an agency either has management of the committee or, in some fashion other than management, exercises control over the committee.

The controlling legal authority is *Washington Legal Foundation v. U. S. Sentencing Commission*, 17 F.3d 1446 (D.C. Cir. 1994). In that case, the appeals court gave structure to the U.S. Supreme Court's prior decision interpreting the term "utilized." (See *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989).) The appeals court ruled that the word "utilized" indicates "something along the lines of actual management or control of the advisory committee." (17 F.3d at 1450). The operative criterion for determining whether a committee has sufficiently close ties to an agency in order to render it "utilized" is whether the agency has either *management* of the committee or exerts some other type of *control*, but not necessarily both.

Similarly, § 102-3.50(b) of the proposed rule (now § 102-3.185(b) of the final rule) used the phrase "actual management and control" with regard to section 15 of the Act. In explaining the relationship between Federal agencies and the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) covered by section 15 of the Act, § 102-3.50(b) of the proposed rule states that "[a]gencies must not manage or control the specific procedures adopted by each academy." However, committees covered by section 15 of the Act must be under *both* the actual management *and* the control of the academies, not that of a Federal agency. In this instance, the use of the conjunctive

word “and” is appropriate and indicates that the academies cannot relinquish *either* management or control of their committees to Federal agencies.

Accordingly, GSA revised the language contained in the final rule by changing *management and control* to *management or control* in the definition of the term “utilized,” now in § 102–3.25 of the final rule, and in those instances in which it appears in the “Key Points and Principles” guidance in the appendices to the final rule.

Clarify the Application of the Act to Agency Interactions With the Public

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, or recommendations on which to base decisions. They expressed concerns that: (1) Uncertainty about the scope of the Act creates a disincentive for Federal officers and agencies wishing to engage in public outreach; (2) the requirements of the Act are being interpreted differently within and among agencies; and (3) GSA’s current regulations do not adequately differentiate between those groups and activities covered by the Act and others that are not. (See 41 CFR 101–6.10.)

GSA recognizes that the broad definition in the Act of an “advisory committee” might be interpreted to extend coverage by the Act to any gathering or two or more persons from whom the President or other Federal officers or agencies seek advice or recommendations. However, in the cases discussed above, the courts have rejected such a broad reading of “advisory committee.” GSA believes that the sections in the final rule on definitions and on groups not covered by the Act, §§ 102–3.25 and 102–3.40, respectively, clarify the limits of the coverage by, or scope of, the Act when applied together.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration that is not subject to the Act. Although advisory committees support Federal decisions in a variety of situations, GSA believes that the ability of agencies to interact with the public in numerous other ways is particularly important because advisory committees are only one method for agencies to obtain the views of the public for their programs. Federal agencies may engage in continuous collaboration using diverse, but complimentary, tools, techniques, and methods. Whether or

not a selected approach includes the use of advisory committees, the potential or perceived applicability of the Act must not prevent constructive collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of Federal advisory committees, but also for information about alternative forms of public involvement.

In GSA’s view, agencies have broad latitude to consult with the public using many different approaches that are not subject to the Act. Public consultation formats that generally fall outside of the scope of the Act include public meetings, information exchange forums, meetings initiated with or by non-governmental organizations, Federal participation on groups that are not established or utilized by the Government, and certain work products generated by contractors as a result of consultation with the public.

While FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement. Within this context, agencies wishing to consult with private individuals, non-governmental organizations, or with the public at large through other assemblages often must consider whether or not the Act applies to a given situation.

The number and range of scenarios presented by the commenters underscore the importance of presenting a clearer understanding of how advisory committees are established by Federal agencies or how the Government’s relationship with groups not established within the meaning of the Act may nevertheless become subject to the Act if they are *utilized*. Based upon the comments received, the circumstances under which advisory committees are *established* within the executive branch appear to be well understood. Accordingly, GSA retained the language contained in § 102–3.30 of the proposed rule in § 102–3.25 of the final rule and throughout subpart B.

However, as noted in the above discussion of the proposed rule’s treatment of the term “utilized,” agencies must determine whether or not their relationship with a group created by non-Federal entities constitutes *actual management or control* within the meaning of the Act. To help agencies make this determination, GSA has included within the final rule several new examples illustrating the application of the *actual management or control* test to different situations.

These additions are contained in the “Key Points and Principles” guidance in Appendix A to Subpart A.

Explain the Relationship Between Committees Established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) and the Act

The Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, December 17, 1997, established separate procedures for committees that are managed and controlled by NAS or NAPA. Subpart E of the final rule contains implementing instructions for the new section 15 of FACA.

Clarify the Distinction Between Advisory Committees Subject to the Act and Operational Committees Not Covered by the Act

Five commenters suggested that further guidance in the final rule is necessary to assist agencies in differentiating an operational committee not covered by the Act from one that performs primarily advisory functions and is, therefore, subject to the Act. GSA added guidance within Appendix A to Subpart A listing those characteristics generally associated with committees having primarily operational, as opposed to advisory, functions.

Clarify the Applicability of the Act to Advisory Committee Meetings Conducted Through Electronic Means

Four commenters supported GSA’s language contained in the proposed rule extending the definition of “committee meeting” to meetings conducted in whole or part through electronic means. However, two commenters suggested additional clarifications, which GSA has adopted.

First, GSA slightly modified the definition of “committee meeting” contained in § 102–3.25 of the final rule to include a “gathering” of advisory committee members whether in person or through electronic means. This change was made to highlight coverage by the Act of both physical and “virtual” meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

Second, GSA amended the language contained in § 102–3.140 of the final rule to provide for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This change complements existing policy covering advisory committee meetings that are held within a physical setting, such as a conference room, by ensuring that agencies adequately plan for public

participation by adding additional capability (such as a designated number of public call-in lines for a teleconference) to ensure access to committee deliberations.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter expressed concern that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members. GSA recognizes that the guidance contained in the proposed rule is limited to the language of the Act, but believes that the provisions of section 5(c) of the Act are broad enough to allow for agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive orders, and the needs of the agency responsible for the advisory committee.

However, GSA added a list of possible considerations within Appendix A to Subpart B that, while not comprehensive or universally applicable, may help in developing a plan for balancing an advisory committee's membership.

Emphasize the Importance of Maximizing an Advisory Committee's Independent Judgment

Five commenters offered various suggestions to address the requirement contained in section 5(b)(3) of the Act, which is intended to ensure that the work products of an advisory committee reflect the group's independent judgment.

Included among these suggestions were recommendations from the U.S. Office of Government Ethics (OGE) that GSA modify the language contained in § 102-3.155 of the proposed rule (now contained in Appendix A to Subpart C of the final rule) to clarify the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members. GSA adopted all of OGE's suggestions.

The remaining suggestions received concerned the appointment of advisory committee members, including a recommended change to § 102-3.155 of the proposed rule (now Appendix A to Subpart C) to clarify that: (1) An agency may appoint a member to an advisory committee based upon the recommendation of an organization to be represented; and (2) recommendations from an advisory committee may be a part of an agency's process to nominate new members. GSA adopted these changes and suggestions.

Provide Additional Guidance on the Management of Federal Records

GSA received suggestions from the National Archives and Records Administration (NARA) regarding three areas where additional guidance on records management issues could be useful. Specifically, NARA recommended that § 102-3.190 of the proposed rule: (1) Be expanded to include all recordkeeping requirements specified by the Act, not just those relating to advisory committee minutes; (2) include a statement that records should be scheduled for disposition before actual termination of the advisory committee; and (3) with regard to information that must be included within an advisory committee's charter, include a determination as to whether its records fall within the Presidential Records Act, 44 U.S.C. Chap 22.

GSA addressed these recommendations by expanding § 102-3.200 of the proposed rule (now Appendix A to Subpart D) to include additional guidance relating to records management and to highlight the applicability and importance of Federal recordkeeping statutes and policies to advisory committee operations. GSA decided to include this guidance within this appendix because the Act generally is silent on records management issues, with the exception of the responsibilities of the Committee Management Officer (CMO) in section 8(b)(2) of the Act.

Pursuant to the National Archives and Records Administration Act, 44 U.S.C. Chap. 21, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition. The Archivist, working in conjunction with the agencies' Records Management Officers, also is responsible for identifying records that are appropriate for transfer to the permanent Archives of the United States and those that must be processed in accordance with the Presidential Records Act.

Strengthen Provisions Relating to the Public's Access to Advisory Committee Records

Two commenters suggested that the final rule contain more explicit guidance regarding the public's access to committee records under section 10(b) of the Act. In particular, the commenters recommended adding language describing the circumstances under which records may be withheld pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

GSA believes that timely access to advisory committee records is an important element of the public access provisions of the Act and, therefore, agrees with these suggestions. GSA further believes that there are two separate, but equally important issues related to the availability of advisory committee records under section 10(b) of FACA: (1) The extent to which records may be protected from disclosure under FOIA; and (2) the extent to which agencies may require that requests for non-exempt records be processed under the request and review process established by section 552(a)(3) of FOIA.

Section 10(b) of the Act provides that:

Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Records covered by the exemptions set forth in section 552(b) of FOIA generally may be withheld. However, it should be noted that FOIA Exemption 5 generally cannot be used to withhold documents reflecting an advisory committee's internal deliberations.

An opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 Op. O.L.C. 73, April 29, 1988, entitled "Disclosure of Advisory Committee Deliberative Materials," concludes that FOIA Exemption 5 "is not generally applicable to materials prepared by or for an advisory committee, but that it does extend to protect privileged documents delivered from the agency to an advisory committee." The opinion further states that:

This construction gives meaning to exemption 5 without vitiating Congress' enumeration of deliberative documents such as working papers and drafts as subject to disclosure. It is also supported by a close reading of exemption 5 itself. Because by its terms exemption 5 protects only inter-agency and intra-agency documents and because an advisory committee is not an agency, documents do not receive the protection of exemption 5 by virtue of the fact that they are prepared by an advisory committee. On

the other hand, documents prepared by an agency do not lose the protection of exemption 5 by virtue of the fact that they are delivered to an advisory committee.

In determining whether or not such records fall within these narrow exclusions, the OLC opinion provides that consideration should be given to determining whether or not section 10(b) of FACA is applicable in the first instance. As noted in the OLC opinion:

Section 10(b) itself applies only to materials made available to or prepared for or by an advisory committee established by statute or reorganization plan or established or utilized by the President or an agency. 5 U.S.C. app. I, 3(2), 10(b). Accordingly, in determining whether a document is to be disclosed the first issue is not whether it is subject to an exemption under 5 U.S.C. 552 but whether it meets this threshold definition.

In explaining this threshold determination of whether particular records are subject to the section 10(b) disclosure requirement, the OLC opinion states that:

The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)'s application to the work prepared by a staff member of an advisory committee or a staffing entity within an advisory committee, such as an independent task force limited to gathering information, or a subcommittee of the advisory committee that is not itself established or utilized by the President or agency, so long as the material was not used by the committee as a whole.

Although advisory committee records may be withheld under the provisions

of FOIA if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

In *Food Chemical News v. Department of Health and Human Services*, 980 F.2d 1468, 299 U.S. App. DC 25, the appeals court held that:

Under section 10(b) of FACA an agency is generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. Except with respect to those materials that the agency reasonably claims to be exempt from disclosure pursuant to FOIA, a member of the public need not request disclosure in order for FACA 10(b) materials to be made available. Thus, whenever practicable, all 10(b) materials must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply.

Accordingly, GSA included language within § 102-3.170 of the final rule describing the policy to be followed in implementing section 10(b) of the Act, and included additional guidance in Appendix A to Subpart D concerning the applicability of FOIA to records covered by section 10(b) of FACA.

Improve the Organization of the Final Rule

During the course of evaluating comments received from all sources,

GSA conducted a review of the proposed rule's general organization and structure for the purpose of achieving greater clarity and consistency in presentation. This effort led to a number of changes, such as redesignating the "Key Points and Principles" sections following each subpart as appendices. Other changes were made throughout the final rule to improve alignment between section headings and the material that follows. Similar changes were made within the appendices in order to improve the linkage between the examples or questions and the corresponding guidance.

In addition, GSA reorganized the final rule to redesignate subpart B as subpart E to improve the flow of information distinguishing Federal advisory committees subject to the Act from those committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) which, if not *utilized* by the executive branch, are not subject to the Act's provisions. Section numbers previously assigned in the proposed rule affected by the redesignation of subpart B as subpart E, subpart C as subpart B, subpart D as subpart C, and subpart E as subpart D have been changed accordingly.

C. Technical and Procedural Comments

The final rule incorporates several technical and procedural recommendations made by a range of commenters, particularly in the following sections or appendices:

Section/Appendix	Modification
102-3.60	Specific procedures for consulting with the Secretariat have been eliminated. GSA will issue separate guidance to agencies covering the administration of the consultation requirement.
Appendix A to Subpart B	Addition of guidance relating to the achievement of "balanced" advisory committee membership.
Appendix A to Subpart B	Addition of guidance covering the legal duration of the charter of an advisory committee required by statute where Congress authorizes the advisory committee for a period exceeding two years.
Appendix A to Subpart C	Addition of guidance addressing the designation of an alternate Designated Federal Officer (DFO).
102-3.130	All references to compensation limits imposed by the Act have been updated, and references to alternative similar agency compensation systems other than the General Schedule have been included.
102-3.130	All references to the word, "handicapped," have been replaced with the phrase, "with disabilities."
Appendix A to Subpart D	Addition of guidance regarding activities that are not subject to the notice and open meeting requirements of the Act.
102-3.165	The requirement for the completion of advisory committee meeting minutes now requires the DFO to ensure certification within the time limit specified.

D. Consultation With Other Federal Agencies

Pursuant to section 7(d) of the Act, the guidelines contained in this final

rule with respect to uniform fair rates of compensation for comparable services of members and staff of, and experts and consultants to advisory committees have

been established after consultation with the U.S. Office of Personnel Management (OPM).

Although not required by the Act, the guidelines contained in this final rule that refer to the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members have been established after consultation with the U.S. Office of Government Ethics (OGE).

Although not required by the Act, the guidelines contained in this final rule that relate to the management of advisory committee records have been established after consultation with the National Archives and Records Administration (NARA).

E. Executive Order 12866

GSA has determined that this final rule is a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

F. Regulatory Flexibility Act

GSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impact small entities and applies only to Federal officers and agencies.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

H. Small Business Regulatory Enforcement Fairness Act

This final rule is being submitted for Congressional review as prescribed under 5 U.S.C. 801.

List of Subjects in 41 CFR Parts 101-6 and 102-3

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,
Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

1. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

§ 101-6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 102-3 (41 CFR part 102-3).

CHAPTER 102—[AMENDED]

2. Part 102-3 is added to subchapter A of chapter 102 to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this subpart cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15 Who are the intended users of this part?
- 102-3.20 How does this part meet the needs of its audience?
- 102-3.25 What definitions apply to this part?
- 102-3.30 What policies govern the use of advisory committees?
- 102-3.35 What policies govern the use of subcommittees?
- 102-3.40 What types of committees or groups are not covered by the Act and this part?

Appendix A to Subpart A of Part 102-3—Key Points and Principles

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What are the authorities for establishing advisory committees?
- 102-3.55 What rules apply to the duration of an advisory committee?
- 102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?
- 102-3.65 What are the public notification requirements for discretionary advisory committees?
- 102-3.70 What are the charter filing requirements?
- 102-3.75 What information must be included in the charter of an advisory committee?
- 102-3.80 How are minor charter amendments accomplished?
- 102-3.85 How are major charter amendments accomplished?

Appendix A to Subpart B of Part 102-3—Key Points and Principles

Subpart C—How Are Advisory Committees Managed?

- 102-3.90 What does this subpart cover and how does it apply?
 - 102-3.95 What principles apply to the management of advisory committees?
 - 102-3.100 What are the responsibilities and functions of GSA?
 - 102-3.105 What are the responsibilities of an agency head?
 - 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
 - 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
 - 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
 - 102-3.125 How should agencies consider the roles of advisory committee members and staff?
 - 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?
- Appendix A to Subpart C of Part 102-3—Key Points and Principles

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.135 What does this subpart cover and how does it apply?
 - 102-3.140 What policies apply to advisory committee meetings?
 - 102-3.145 What policies apply to subcommittee meetings?
 - 102-3.150 How are advisory committee meetings announced to the public?
 - 102-3.155 How are advisory committee meetings closed to the public?
 - 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
 - 102-3.165 How are advisory committee meetings documented?
 - 102-3.170 How does an interested party obtain access to advisory committee records?
 - 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?
- Appendix A to Subpart D of Part 102-3—Key Points and Principles

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.180 What does this subpart cover and how does it apply?
 - 102-3.185 What does this subpart require agencies to do?
- Appendix A to Subpart E of Part 102-3—Key Points and Principles

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102–3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

- (1) Executive branch officials and others outside Government currently involved with an established advisory committee;
- (2) Executive branch officials who seek to establish or utilize an advisory committee;
- (3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and
- (4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102–3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and

specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102–3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means 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 or recommendations for the President or on issues or policies within the scope of an agency official’s responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer (“CMO”), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (“Secretariat”), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer (“DFO”), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President’s delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or

agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102–3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an advisory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

§ 102–3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102–3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government 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. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M–95–20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under

the requirements of the Act and this part.

Appendix A to Subpart A of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.	102-3.25, 102-3.40(d), 102-3.40(f)	<ol style="list-style-type: none"> 1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners?" 	<p>A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency.</p> <p>B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.</p>
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102-3.25, 102-3.40(d), 102-3.40(f)	<ol style="list-style-type: none"> 1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped? 	<p>A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.</p>

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	<ol style="list-style-type: none"> 1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an “individual” apply only to “natural persons?” 	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.” (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting “as a group” under the Act. (ii) In this respect, “individual” is not limited to “natural persons.” Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not “managed or controlled” by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform “operational” duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are “operational committees” subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the “primary” mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily “operational” functions are not subject to the Act.	102–3.40(k)	1. What characteristics are common to “operational committees?” 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation’s parks. Part of the committee’s role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA?	A. In answer to question 1, non-advisory, or “operational” committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program. B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily “operational” and not covered by FACA. C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

§ 102–3.50 What are the authorities for establishing advisory committees?

FACA identifies four sources of authority for establishing an advisory committee:

(a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);

(b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);

(c) *Authorized by statute.* By law where the Congress authorizes, but does

not direct the President or an agency to establish it (*discretionary*); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102–3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102–3.30(b), it can be

reestablished in accordance with § 102–3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102–3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure 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 advisory 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.

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in accordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540-4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102-3.75.

§ 102-3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102-3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102-3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102-3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope

substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102-3.70.

§ 102-3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in

objectives and scope, duties, and estimated costs, are the same as in § 102-3.80, except that for discretionary advisory committees an agency must:

(a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and

(b) File the amended charter as specified in § 102-3.70.

Appendix A to Subpart B of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102-3.60, 102-3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102-3.60(a), 102-3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102-3.105(e) and reflect consultation with the Secretariat under § 102-3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102-3.30(c), 102-3.60(b)(3) ..	1. What factors should be considered in achieving a "balanced" advisory committee membership?	A. The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102-3.70(b)	1. If an advisory committee's duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Subpart C—How Are Advisory Committees Managed?

§ 102-3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102-3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

(a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff

support, and access to key decisionmakers.

(b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, limitations, if any, on its duties, and the agency's goals and objectives. In general, the more specific an advisory committee's tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102–3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

- (1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;
- (2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;
- (3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;
- (4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;
- (5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and
- (6) Providing recommendations for transmittal by the Administrator to the

Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102–3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;
- (b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;
- (c) Designate a Committee Management Officer (CMO);
- (d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;
- (f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;
- (g) Develop procedures to assure that the advice or recommendations of advisory committees 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;

(h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;

- (i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and
- (j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to § 102–3.140 and the agency's guidelines.

§ 102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§ 102–3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102–3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by § 102–3.105.

§ 102–3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

- (a) Approve or call the meeting of the advisory committee or subcommittee;
- (b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;
- (c) Attend the meetings;
- (d) Adjourn any meeting when he or she determines it to be in the public interest; and
- (e) Chair the meeting when so directed by the agency head.

§ 102–3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory

committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to

any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which

the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS-15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the

members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their

duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(l) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as

an individual with disabilities as provided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

Appendix A to Subpart C of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102-3.105, 102-3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff. B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements. C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102-3.130(a)	1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization? 2. If so, can different persons represent the organization at different meetings?	A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members. B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102-3.130(d), 102-3.130(g), 102-3.130(e),	1. May members and staff be compensated for their service or duties on an advisory committee? 2. Are the guidelines the same for compensating both members and staff? 3. May experts and consultants be employed to perform other advisory committee work?	A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			<p>B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency “may” pay members on either an hourly or a daily rate basis, and “may not” provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency “must” pay staff on an hourly rate basis only, and “may” provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.</p> <p>C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)</p>
<p>IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..</p>	<p>102–3.105(h)</p>	<p>1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules? 2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?</p>	<p>A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member’s status. The determination of a member’s status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a “representative” or a “special Government employee” (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes, while representatives are not subject to these ethics requirements.</p> <p>B. The answer to question 2 is the agency’s Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.</p>
<p>V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..</p>	<p>102–3.105(c), 102–3.105(i)</p>	<p>1. Must an agency’s CMO and each advisory committee DFO be appointed by the agency head?</p>	<p>A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency’s policies and procedures.</p>

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102–3.125(c)	<p>2. May an agency have more than one CMO?</p> <p>1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?</p>	<p>B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its sub-components, which are subordinate to the CMO's agencywide responsibilities and functions.</p> <p>A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.</p>

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102–3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a

reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with all openness requirements of this subpart.

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102-3.150.

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102-3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102-3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the

Presidential advisory committee pursuant to § 102-3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102-3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304-GSA-AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102-3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29-33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102-3.140, 102-3.145(a), 102-3.155.	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the Federal Register announcing advisory committee meetings.	102-3.150	1. Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102-3.150. (i) "Blanket notices" should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee's schedule. (ii) An agency's Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
<p>III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.</p>	<p>102–3.170</p>	<p>1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?</p>	<p>A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist. (i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged “inter-agency or intra-agency” documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002.)</p>

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
<p>IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.</p>	<p>102–175(e)</p>	<p>1. How must advisory committee records be treated and preserved?</p>	<p>A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA.</p> <p>B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA.</p> <p>C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee.</p> <p>D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.</p>

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart,

NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the

academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized

representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures

substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102-3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102-3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.

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Dave Bahr

David Bahr is a Eugene, Oregon-based attorney who has represented public information requesters for over 24 years. His clients include large environmental groups, journalists covering the Columbia River salmon wars, and a small non-profit Ohio water district in litigation with the DuPont chemical corporation. Mr. Bahr is a principal in FOIADVOCATES.COM, an online project intended to foster greater public access to state and federal government information. He received the 2001 Society of Professional Journalists' Sunshine Award for "outstanding efforts in advocacy under the Freedom of Information Act (FOIA) and state public records laws and personal courage in working to keep public information publicly available." Mr. Bahr also earned the Kerry L. Rydberg Award for accomplishment in public interest litigation by the 1999 Public Interest Law Conference at the University of Oregon Law School.

Delores Barber

Delores Barber is the Department of Homeland Security Deputy Chief Freedom of Information Act (FOIA) Officer. In the position since March 2011, she advises the Chief Privacy Officer and other senior leaders on effective FOIA administration. Ms. Barber has over 20 years of leadership and Information Technology (IT) experience in the federal government, nearly half on Capitol Hill and the rest with the Departments of Commerce, Education, and Homeland Security. Ms. Barber was an IT specialist and Deputy Chief of Communications at Commerce's Bureau of Economic Analysis where she was responsible for managing the overall operations of that agency's Web sites, publications, FOIA operations, and public affairs. She directed Education's FOIA Service Center and served as acting director of the \$1 billion Impact Aid Program Office. Ms. Barber holds a bachelor's degree in business administration and earned an Olin Business School Certificate in Public Leadership from Washington University in St. Louis in partnership with the Brookings Institution.

Andrew Becker

Andrew Becker is the border and national security reporter for The Center for Investigative Reporting (CIR), a nonprofit nonpartisan investigative reporting team. Since joining CIR in 2008, Mr. Becker has regularly relied on the Freedom of Information Act (FOIA) and similar state public information laws to obtain documents and records he has used to write about the U.S. immigration system, border security and corruption, intelligence, drug trafficking and government oversight. The Transactional Records Access Clearinghouse in 2013 cited his use of FOIA as a "great example" of using requests to ferret out important news stories. His reporting, which has helped spur Congressional action, has appeared in the Washington Post, Los Angeles Times, New York Times, NPR, Newsweek, The Daily Beast and other media outlets. Mr. Becker earned a master's degree in journalism from the University of California at Berkeley. He lives in the San Francisco Bay Area.

Karen Finnegan

Karen Finnegan is the Chief of the Programs and Policies Division at the Department of State, which develops Freedom of Information Act (FOIA) policies and procedures, handles FOIA litigation and manages the Department's special document productions. Ms. Finnegan served as the first Deputy Director of the Office of Government Information Services (OGIS). She has held several FOIA attorney positions in the Department of Justice, most recently as a Special Assistant U.S. Attorney assigned to the FOIA Staff of the Executive Office for United States Attorneys. Ms. Finnegan, a longtime board member of American Society of Access Professionals (ASAP), served as ASAP Board of Directors president in 2007 and teaches at its various training programs. Her experience across multiple agencies spans the entire FOIA process, from processing requests to defending against FOIA lawsuits to mediating FOIA disputes outside of court.

Eric Gillespie

Eric Gillespie is the CEO of Govini, a business intelligence and analytics company he founded to give businesses custom analytics about government market data. He is the former Senior Vice President and acting CEO of Onvia, a Nasdaq-listed firm that provides research about state and municipal government agencies. Prior to Onvia, he founded The Patent Board, which provides intellectual property analytics and tools based on U.S. Patent and Trademark Office data. Mr. Gillespie held senior technology positions at IBM, Scient, CSC and other leading technology companies. As an expert in the private sector's use of public sector data, he has testified before the Congress on matters of government transparency, data and public sector technology, and has provided expert commentary to NPR, Fortune, The Economist, The Wall Street Journal, the International Herald Tribune, and The Washington Post, among others. Mr. Gillespie serves and has served on the boards of a variety of for-profit and non-profit organizations, and is a graduate of Harvard Business School.

Larry Gottesman

Larry Gottesman is the agency Freedom of Information Act (FOIA) Officer and Acting Chief of the FOIA and Privacy Act Branch for the Environmental Protection Agency (EPA). He is responsible for the day-to-day operations of the National FOIA and Privacy Programs and provides FOIA policy guidance to the EPA. Mr. Gottesman was one of the innovators of *FOIAonline*, a shared-service platform used by eight Federal agencies to receive and help process FOIA requests and report on the activities of their FOIA programs. Mr. Gottesman has worked in FOIA for about 25 years at the U.S. Department of Labor and EPA, where he reduced the agency's FOIA backlog by more than 97 percent without additional resources. Mr. Gottesman earned his bachelor's degree in political science from the University of South Florida and his law degree from George Mason University School of Law. He was a Senior Executive Fellow at the John F. Kennedy School of Government at Harvard University in 2011.

James Hogan

James Hogan is Chief of the Defense Freedom of Information Policy Office, responsible for formulating and implementing FOIA policy for the Department of Defense (DoD) on behalf of the agency's Chief FOIA Officer. He also oversees the administrative processing of all FOIA litigation and appeals for DoD's Office of the Secretary of Defense (OSD), the Office of the Chairman of the Joint Chiefs of Staff, and the Combatant Commands. Mr. Hogan has conducted FOIA training for DoD, the Departments of Justice and Energy, and the American Society of Access Professionals. Under Mr. Hogan's guidance the DoD reduced its FOIA backlog 43 percent between 2009 and 2013. A retired Air Force Lieutenant Colonel, Mr. Hogan was an Instructor Navigator in KC-135, EC-135, and T-43 aircraft and an Assistant Professor of Philosophy at the U.S. Air Force Academy. He earned his undergraduate degree at Grove City College and his master's degree at The Ohio State University.

Clay Johnson

Clay Johnson is the CEO of the Department of Better Technology, which creates software for government and the people it serves. In the last 10 years, Mr. Johnson spearheaded technology initiatives as the Sunlight Foundation's Director of Sunlight Labs, a community of open-source developers and designers dedicated to make the federal government more transparent, accountable, and responsible. One of the first Presidential Innovation Fellows at the White House, Mr. Johnson is the author of the best-selling book, *The Information Diet: A Case for Conscious Consumption*.

Nate Jones

Nate Jones is the Freedom of Information Act (FOIA) Coordinator for the National Security Archive, an independent non-governmental research institute and library located at George Washington University (GWU). Mr. Jones oversees thousands of FOIA and Mandatory Declassification Review (MDR) requests and hundreds of FOIA and MDR appeals that the Archive submits each year. He acts as liaison between Archive analysts and government FOIA officers, serves as the Archive's FOIA counselor to the public, edits the Archive's blog "Unredacted," and manages its social media. He earned his master's degree in Cold War History from GWU, where he wrote his thesis on—and submitted FOIA requests about—the 1983 "Able Archer" nuclear war scare. He continues to submit FOIA requests for, publish, and analyze documents on the 1983 incident. Mr. Jones is on the Board of Directors for the American Society of Access Professionals.

Ginger McCall

Ginger McCall is Associate Director of the Electronic Privacy Information Center (EPIC), a public interest research center, where she directs the Open Government Program. She manages EPIC's Freedom of Information Act (FOIA) litigation and works on a variety of related issues, including consumer privacy protection, international privacy law, and national security matters. Ms. McCall also teaches a course on the Law of Open Government at Georgetown University Law Center. Ms. McCall co-edited *Litigation Under the Federal Government Laws 2010* and has written for the *New York Times* and has co-authored several friend-of-the-court briefs to the U.S. Supreme Court. Ms. McCall has spoken on privacy and open government issues in a variety of academic and conference venues. Ms. McCall has also provided expert commentary for local, national, and international media, including the *New York Times*, *Washington Post*, *Fox News*, *NPR*, *MSNBC*, *USA Today*, the *Wall Street Journal*, and *Al Jazeera*.

Michele Meeks

Michele Meeks is the Information and Privacy Coordinator for the Central Intelligence Agency.

Martin Michalosky

Martin Michalosky is the Freedom of Information Act (FOIA) Manager at the Consumer Financial Protection Bureau (CFPB) where he is responsible for everything from establishing policy to processing FOIA requests. Before joining the CFPB, Mr. Michalosky served in leadership positions with the Department of Defense related to FOIA, records management, and privacy. These positions included Acting Director for the U.S. Army's Intelligence and Security Command Freedom of Information/Privacy Office, the Chief of the U.S. Army's Investigative Records Repository, and the Chief of Communications and Information Management for the Air Force Office of Special Investigations. Mr. Michalosky has shared his expertise and experience at events sponsored by the American Society of Access Professionals (ASAP), the Association of Information and Image Management (AIIM), and industry leaders. He is on ASAP's Board of Directors and oversees a variety of educational initiatives like webinar development and "Food for Thought" discussions. He holds associate degrees in Information Management and Information Services Technology, a bachelor's degree in Information Systems Management, and a master's in Management with a minor in Homeland Security.

Maggie Mulvihill

Maggie Mulvihill is a professor of journalism at Boston University (BU). A former media lawyer, Ms. Mulvihill is a member of the Steering Committee for the Reporters Committee for Freedom of the Press, where she was a law school intern. She is a Faculty Fellow at BU's Rafik B. Hariri Institute for Computing and Computational Science & Engineering where she teaches computer science and journalism students how to tell data-driven stories. A co-founder of the New England Center for Investigative Reporting (NECIR), Ms. Mulvihill has taught hundreds of students and professional journalists how to incorporate data into their reporting. Since 2011, her NECIR students have been honored with ten regional or national journalism awards including the Philip Meyer Precision Journalism Award from Investigative Reporters and Editors and the Society of Professional Journalists Regional Mark of Excellence Award. Ms. Mulvihill serves on the board of the New England First Amendment Coalition and was a 2004-2005 fellow at the Nieman Foundation for Journalism at Harvard University.

Miriam Nisbet

In September 2009, Miriam Nisbet became the founding Director of the Office of Government Information Services (OGIS), the Freedom of Information Act (FOIA) Ombudsman office created by the 2007 FOIA Amendments. Ms. Nisbet previously served for two years at the United Nations Educational, Scientific and Cultural Organization (UNESCO) in Paris as Director of the Information Society Division in UNESCO's Communication and Information Sector. From 1999 to 2007, Ms. Nisbet was Legislative Counsel for the American Library Association's Washington Office, working primarily on copyright and other intellectual property issues raised by the digital information environment. She was NARA's Special Counsel for Information Policy 1994 to 1999. Before joining the National Archives, Ms. Nisbet had served since 1982 as the Deputy Director of the Office of Information and Privacy, U.S. Department of Justice. A graduate of the University of North Carolina at Chapel Hill and the University's School of Law, Ms. Nisbet is a member of the Bars of the District of Columbia and North Carolina. She is an Adjunct Lecturer at the University of Maryland's College of Information Studies.

Ramona Branch Oliver

Ramona Branch Oliver is the Director of the Office of Information Services in the Office of the Solicitor at the Department of Labor (DOL). She has spent nearly 20 years in Federal service at DOL and the National Archives and Records Administration (NARA) working with the Freedom of Information Act (FOIA) and the Privacy Act as well as statutes governing access to presidential records, and deeds governing donated historical materials and records with unique or special restrictions to access. Ms. Oliver began her career working with the public as a reference archivist working to provide access to the historically valuable records of the federal government; she now works with FOIA requesters seeking access to DOL records. Ms. Oliver is a frequent lecturer on FOIA and Privacy Act issues.

Melanie Ann Pustay

Melanie Ann Pustay is the Director of the Department of Justice's Office of Information Policy (OIP) which has statutory responsibility for encouraging and overseeing agency compliance with the Freedom of Information Act (FOIA). OIP provides training and counseling services government wide. Since becoming Director in 2007, Ms. Pustay has issued policy guidance for agency personnel on a wide range of issues related to FOIA implementation, including guidance on the President's FOIA Memorandum and the Attorney General's FOIA Guidelines. She develops reporting requirements for agency Chief FOIA Officer Reports and regularly assesses agency progress. Ms. Pustay is the editor-in-chief of the Department of Justice Guide to the Freedom of Information Act, a comprehensive legal treatise on FOIA. Ms. Pustay regularly lectures on current FOIA issues. Since 2003, she has worked extensively with government officials in numerous countries, including Argentina, Chile, and China, as well as the Organization of American States, to assist officials in implementing open-government initiatives. Ms. Pustay received the Attorney General's Distinguished Service Award for her role in providing legal advice and guidance on records disclosure issues.

David S. Reed

David S. Reed is an experienced FOIA requester, responder, and advocate. While working at Electronic Data Systems Corp. and Reed Public Policy, Inc., he filed FOIA requests and appeals with federal agencies. In his current job as Assistant Chief Financial Officer at the Federal Communications Commission, he has managed responses to numerous FOIA requests, and serves on the FOIA Process Reform Working Group. He has spoken on FOIA and open government at the American Society for Public Administration's national conference and at Sunlight Foundation's Transparency Camp. Mr. Reed holds a Master in Public Policy degree from the Harvard Kennedy School, is on the Board of Directors of National Capital Area Chapter of the American Society for Public Administration, and has been published in Public Administration Review and other journals. He blogs at IndiePublicAdministration.org.

Anne Weismann

Ms. Weismann serves as Chief Counsel to Citizens for Responsibility and Ethics in Washington (CREW). Prior to joining CREW, Ms. Weismann served as Deputy Chief of the Enforcement Bureau at the Federal Communications Commission, where she had responsibility for all of the Bureau's telecommunications matters. Before that, she worked in the Civil Division of the Department of Justice, where she served as an Assistant Branch Director with supervisory responsibility over banking litigation, housing litigation, and from 1995 until 2002, all government information litigation. This included litigation under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, and statutes governing federal and presidential records. Prior to that, she worked in the Solicitor's Office of the Department of Labor. Ms. Weismann received her bachelor's degree *magna cum laude* from Brown University and her law degree from George Washington University's National Law Center.

Lee White

Since 2006, Lee White has served as the Executive Director of the National Coalition for History (NCH) in Washington, D.C. A consortium of over 50 organizations, NCH advocates on federal legislative and regulatory issues affecting historians, archivists, educators, students, researchers, political scientists, and other stakeholders. While with NCH, White has testified before Congress on National Archives programs. He has also collaborated with the open government community in working with federal agencies to reduce over-classification of government records, increase public access to unclassified records, speed the declassification process, and establish standards for the preservation and retrieval of federal and presidential electronic records. Mr. White is an attorney with over 30 years of experience in government relations with membership associations, as well as several years with the federal government as a legislative counsel. In addition to a degree in law from The Catholic University of America, Mr. White also holds a master's degree in history from George Mason University.

Mark S. Zaid

Mark S. Zaid is a Washington, D.C.-based attorney who specializes in cases relating to national security, international law, foreign sovereign and diplomatic immunity, defamation and the Freedom of Information Act (FOIA) and the Privacy Act. Mr. Zaid teaches the D.C. Bar Continuing Legal Education classes on "Defending Security Clearances" (since 2006) and "The Basics of Filing and Litigating Freedom of Information/Privacy Act Requests" (since 2003). Mr. Zaid founded and is the Executive Director of the James Madison Project, which educates the public on issues relating to intelligence gathering and operations, secrecy policies, national security and government wrongdoing. Mr. Zaid is an adjunct professor at Johns Hopkins University's Global Security Studies program. He is a 1992 graduate of Albany Law School of Union University in New York, where he served as an Associate Editor of the Albany Law Review, and earned his bachelor's degree *cum laude* in 1989 from the University of Rochester with honors in political science and high honors in history. Mr. Zaid is a member of the bars of New York State, Connecticut, the District of Columbia, Maryland and numerous federal courts.

Freedom of Information Act Advisory Committee Meeting

Tuesday, June 24, 2014

10 a.m. – 1 p.m.

Logistics

Questions: If you have questions, visit the Committee webpage at <https://ogis.archives.gov/foia-advisory-committee/> or contact Christa Lemelin at Christa.Lemelin@nara.gov, (o) 202-741-5773 or (m) [REDACTED].

Location: The Committee will meet at the National Archives, located at 700 Pennsylvania Avenue, NW, Washington, DC 20408-0001. The pre-meeting briefing will be in the Charters Café. The public meeting begins at 10 a.m. in the Archivist's Reception Room, Room 105.

Arrival: Because this is the Committee's first meeting, **please arrive by 9 a.m.** for a pre-meeting briefing in the Charters Café. Coffee and pastries will be served.

Please use the entrance located on Pennsylvania Avenue between 7th and 9th Streets, NW. National Archives staff will escort members from that entrance.

Entrance and Exit Procedures: The National Archives requires visitors to show one form of government-issued photo identification (e.g. driver's license) to gain admittance.

Visitors entering the building must pass through the magnetometer and send personal belongings through the X-ray scanner. Archives staff will check you in for the meeting and a security officer will give you a temporary NARA-issued identification to be worn at all times.

To protect the holdings of the National Archives, security conducts exit screenings of visitors and staff. Please return your temporary NARA identification to the security desk at the time of your exit screening.

Transportation: For specific information: <http://www.wmata.com/>.

MetroRail

The Archives/Navy Memorial station (Yellow or Green lines) is across Pennsylvania Avenue from the Archives building.

MetroBus

Metrobuses 32, 34, 36, 53, A42, A46, A48, P1, P2, P4, P17, P19, and W13 stop at the Archives Building.

Lunch: If you are joining us for lunch after the meeting, please bring \$15 cash to cover the price of your meal.

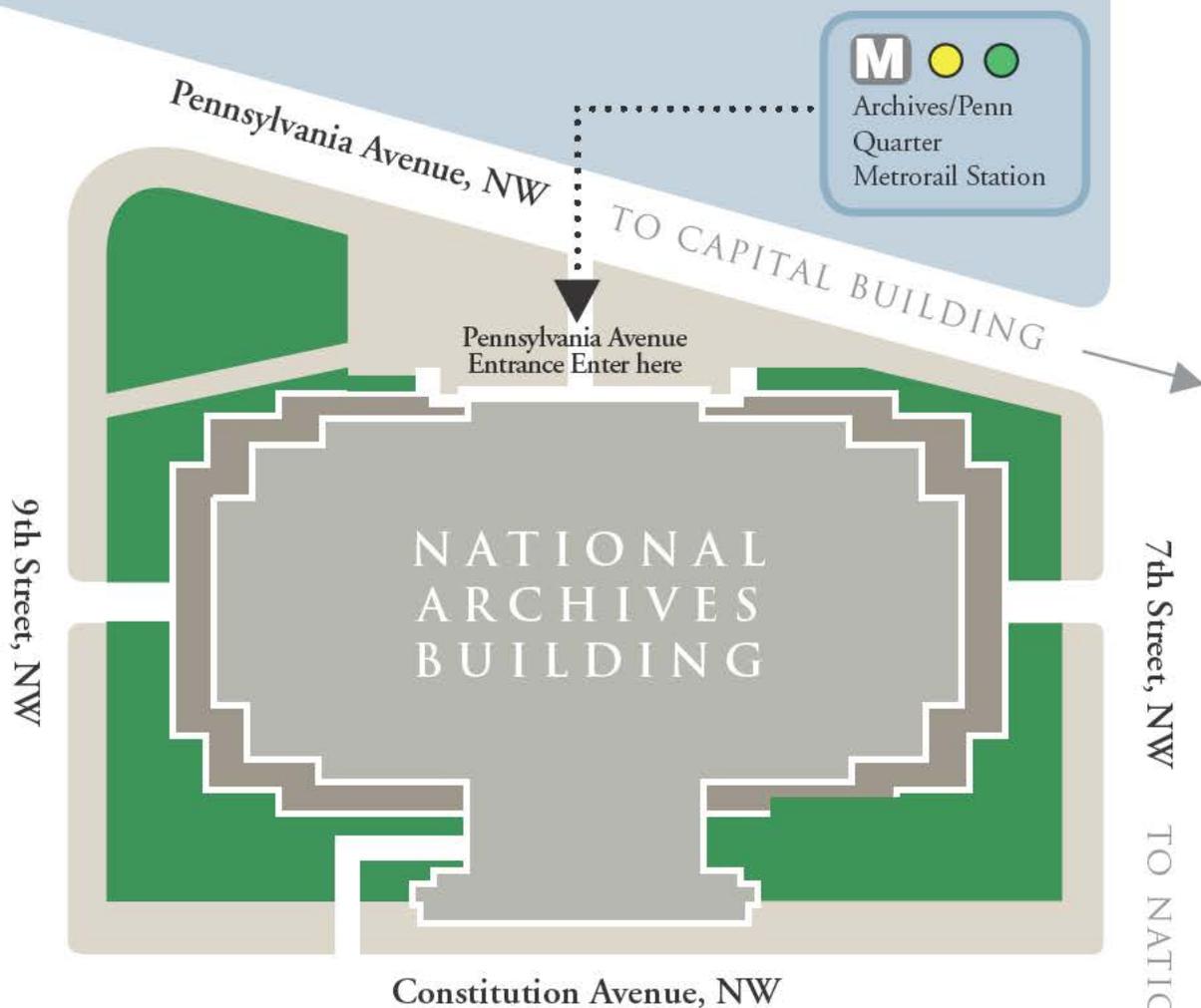
MAP

NATIONAL ARCHIVES BUILDING

700 PENNSYLVANIA AVENUE, NW, WASHINGTON, DC 20408

Directions from the Metro:

1. Exit station through Archives Metro Station entrance.
2. The Archives is to your left, across Pennsylvania Avenue.



National Archives

700 Pennsylvania Avenue NW, Washington DC, 20408

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**National Archives and Records Administration (NARA)
Freedom of Information Act Advisory (FOIA) Committee
Full Agenda**

**Tuesday, June 24, 2014
10 a.m. – 1 p.m.**

Meeting objectives:

- This meeting begins a public conversation on the FOIA Advisory Committee's priorities and launches the Committee's discussion on both existing and proposed FOIA administrative, legislative and policy efforts.
- The Committee will collectively determine which FOIA topics and issues to address and how best to do so in the coming two years.
- The meeting will be an opportunity for the public to comment and interact with the Committee.

Agenda

10:00 a.m.	Welcome and Introductions	Jay Bosanko, NARA Chief Operating Officer, and Miriam Nisbet
10:05 a.m.	Introduction of Committee members	Committee
	Format: Each speaker should briefly introduce him or herself by name, title and agency, department, or organization.	
10:25 a.m.	Expectations and Ground Rules	Miriam Nisbet
10:35 a.m.	Structured Brainstorming Session	Lynn Overmann and Committee
11:20 a.m.	Vote on Project Priorities and Break	Committee
11:35 a.m.	Committee Projects: Project 1	
11:57 a.m.	Committee Projects: Project 2	Miriam leads discussion by Committee
12:17 p.m.	Committee Projects: Project 3	
12:37 p.m.	Public Comments	Miriam will moderate
12:57 p.m.	Closing	Miriam Nisbet
1: 00 p.m.	Committee Lunch	