

Additional Comments from the Union of Concerned Scientists, the Project On Government Oversight, and OMB Watch on ACUS Review of the Federal Advisory Committee Act in the 21st Century

April 15, 2011

Our respective nonprofit organizations have deep and long expertise as observers of, and participants in, federal advisory panels. Many of our organizations also are pioneers in creative uses of new/social media.

We are concerned because the draft commissioned study and preliminary recommendations do not include an exploration of many best practices we have identified as stakeholders interested in increasing accountability and transparency in federal advisory committees and throughout the government. We understood the scope of the study was much broader.¹

There are several potential best practices to consider that were not a part of the study drafted by Professor James T. O'Reilly. For example, the paper acknowledges that it will not be addressing issues such as the significant percentage of closed advisory committee meetings and potential conflicts of interest affecting committee members; yet these are exactly the types of issues that could and should be addressed by making committees more open and accountable to the public through the use of social media and collaborative governance tools.

We support Dr. O'Reilly's conclusion that agencies and committees should have more flexibility to utilize electronic communications without triggering the various open meeting and disclosure requirements under FACA, but we also believe there need to be clear rules in place to ensure that the core work of the committee is not being conducted secretly by individuals with real or perceived conflicts of interest.

We agree there is ample opportunity for agencies to reduce the costs and delays associated with full face-to-face committee meetings by utilizing new/social media tools, such as virtual meetings via asynchronous messages. We also agree that GSA should issue rules and provide examples to give agencies and committees more guidance on the proper use of new/social media under FACA.

However, we are concerned by statements made in Dr. O'Reilly's paper regarding the use of subcommittees that are exempt from FACA. Survey respondents expressed a desire to use subcommittees to develop proposals, write drafts, study sub-issues in advance of a full committee meeting. These respondents also voiced their opposition to a provision in recent FACA legislation that would have eliminated the subcommittee exemption. (Our concerns about

¹ Here is the scope of the study assigned by ACUS:

Conduct a study of potential improvements to the Federal Advisory Committee Act ("FACA" or "the Act") and agency practices under the Act. The study shall identify best agency practices with respect to FACA and it shall particularly investigate, although it need not be limited to, challenges that the Act poses to use of 21st-century media (such as e-mail, social media, interactive web forums or other websites, and the like) and to "collaborative governance" efforts, and shall consider how the Act or practices under the Act might be improved with respect to these Challenges.

the subcommittee loophole in current law are articulated in more detail in our response to the draft recommendations.)

Furthermore, there are other important transparency measures that should be best practices for agencies that are not prohibited by FACA that were excluded from the study. (Though we admit the way to ensure widespread use of technology for more transparency and collaboration is to mandate it.) For example, agencies should make all FACA information available on the Internet in a timely fashion. We'd like to see on the Advisory Committee's websites, perhaps hosted through/by GSA's management secretariat, timely information about the committee, including notices, agendas, meeting transcripts, forms, webcast meetings and archived video recordings of proceedings, documents, names, and brief biographies of its members. We also would ask for additional requirements for public disclosures of conflicts of interest and financial forms.

We know that the committee has asked for revisions to the O'Reilly study, and Dr. O'Reilly has graciously sought out the NGO community for its comments on the ACUS proposals. We also suggest that ACUS should attempt to engage the agencies through their Open Government Working Group participants. We would be happy to work with you in your efforts to cast a wider net to survey advisory committee members, staff, DFOs, CMOs, agency Open Government Teams, agency ethics officers, GSA and OGE officials, and other public end-users, so that ACUS can formulate realistic recommendations that will enable committees to operate with greater efficiency while still allowing for transparency and oversight.