GSA Federal Advisory Committee Act Fundamentals

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Lesson 6 – Federal Laws and Regulations Governing Advisory Committees

Introduction

Federal Laws

FACA Laws

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Appendix A

Comparison of Compensation Scenarios for Advisory Committee Participants

Appendix B

FACA Reporting and Recordkeeping Requirements

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Glossary of Terms
Welcome to Federal Advisory Committee Act Fundamentals

In enacting the Federal Advisory Committee Act (FACA) in 1972, Congress provided a system for governing the creation and operation of advisory committees within the executive branch of the United States Government.

Federal agencies that sponsor advisory committees must adhere to the requirements of FACA and to the FACA implementing regulations (Final Rule) set forth by the Committee Management Secretariat (Secretariat) of the General Services Administration (GSA).

Introduction

This course provides an overview of FACA (through six lessons) including:

- An outline of policies that apply to advisory committees established within the executive branch
- A description of the life cycle process of an advisory committee from creation through termination
- Identification of the key roles that are necessary to ensure the successful accomplishment of each committee's objectives
- Information on how advisory committees are established, renewed, re-established, and terminated
- A description of how Federal advisory committees are managed
- Advisory committee meeting and recordkeeping procedures

In each lesson there will be an opportunity to practice and review what you have learned using self-evaluation activities known as "Knowledge Checks." These activities will enable you to evaluate your understanding of the material.
Introduction (continued)

Do you know how important Federal advisory committees are to our Government's decisionmaking process? These statistics will give you an idea of the part the committees play:

- There are approximately 1,000 federal advisory committees in existence at any time.
- There are approximately 65,000 committee and subcommittee members at any time.
- There are approximately 60 executive departments and agencies that sponsor committees each year.
- There are approximately 1,000 reports issued each year.
- There are approximately 7,000 meetings held each year.

Introduction (continued)

All Federal employees assigned management, legal, operational, or support responsibilities and duties under FACA should be familiar with both the requirements of the Act and the Final Rule. By completing this basic FACA course, you will gain an essential understanding of FACA and the Final Rule, and will achieve the basic functional skills necessary in order to begin or continue performing your FACA responsibilities.

This course is intended as a basic introduction to FACA and is designed to supplement the Secretariat's 2-day instructor-led, interactive classroom Federal Advisory Committee Act management training course.

A complete review of the course is available in a PDF file at the end of the Lesson 6 Knowledge Check.
Lesson 1 – FACA Policies and Procedures

Welcome to Lesson 1: FACA Policies and Procedures

Introduction

Estimated time of completion = 20 minutes

The Federal Government has a long history of utilizing citizen input in the policymaking process. By enacting FACA in 1972, Congress officially recognized the importance of citizen input in the policy process and also provided a necessary means for protecting that input by ensuring that the groups providing advice are accountable to the public. The Act accomplishes this in these three primary areas:

- It ensures that all advice given to the Government is relevant, objective, and open to public review.
- It requires committees to act promptly in rendering their advice.
- It requires that committees comply with cost management and recordkeeping guidelines.

FACA Facts

Advisory committees have played an important role in shaping programs and policies of the Federal Government. When do you think an advisory committee was first used?

Learn More

When do you think an advisory committee was first used?

President George Washington first sought the advice of such a committee during the Whiskey Rebellion in 1794.
FACA Policies and Procedures

Introduction

Lesson Objectives

Upon completion of Lesson 1, FACA Policies and Procedures, you will be able to do the following:

- Describe the purpose of FACA.
- Identify the intended users of FACA.
- Discuss the basic requirements governing the use of Federal advisory committees.
- Determine if FACA applies to your committee or group.

How does FACA affect me?

Chances are, you have been asked to become involved with a Government-affiliated committee or group and need a working definition of FACA. This lesson will help you to gain an understanding of what FACA requires and whether or not it applies to your situation.

There will be an opportunity to practice and review what you have learned using self-evaluation activities known as "Knowledge Checks." These activities will enable you to evaluate your understanding of the material.

On Your Own

You can monitor your learning by becoming aware of how you process and store information in your mind.

Learn More

One way of monitoring your learning is to identify the knowledge you already have about the subject and use that knowledge to help you make sense of the new information. Before continuing with this lesson, write down what you already know about FACA and what you expect to learn. As you learn about FACA, determine how new information fits into or modifies your existing knowledge structure by frequently referring back to your initial thoughts, then add what you have learned.
**FACA Policies and Procedures**

**Purpose**

**What is the purpose of FACA?**

The purpose of the Federal Advisory Committee Act (FACA) is to govern the creation, management, operation, and termination of advisory committees in the executive branch of the Federal Government. Specifically, the Act:

1. Defines what constitutes a Federal advisory committee.
2. Provides general procedures for the executive branch to follow when sponsoring these advisory committees.
3. Assures that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

In other words, FACA provides a structure for managing Federal advisory committees and making them accessible to the public. Let us discuss each of these areas in greater detail, starting with defining what constitutes a Federal advisory committee.
FACA Policies and Procedures

Purpose

What is the purpose of FACA? (continued)

<table>
<thead>
<tr>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advisory Committee on Construction Safety and Health established by the Department of Labor to obtain recommendations on safety and health issues in the construction industry</td>
</tr>
<tr>
<td>A Select Committee established by the Senate to advise the Senate</td>
</tr>
<tr>
<td>A Committee on Cell Phone Usage established by the GSA to collect statistics regarding government cell phones in use today</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Advisory Function</th>
<th>Advises Executive Branch</th>
<th>FACA Applies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes, performs an advisory function.</td>
<td>No, doesn’t advise executive branch.</td>
<td>No, FACA doesn’t apply.</td>
</tr>
<tr>
<td>No, doesn’t perform an advisory function.</td>
<td>No, doesn’t advise executive branch.</td>
<td>No, FACA doesn’t apply.</td>
</tr>
</tbody>
</table>

2. FACA provides general procedures for the executive branch to follow when sponsoring Federal advisory committees.

FACA requires certain actions be taken throughout the life cycle of an advisory committee. There are standard procedures for establishing, operating, and terminating an advisory committee.

For example, for every committee, the sponsoring agency must file a charter, provide notices to the public, and maintain records on committee actions, thus ensuring that all advisory committees operate in a consistent manner.
FACA Policies and Procedures

Purpose

What is the purpose of FACA? (continued)

3. FACA is designed to ensure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

By mandating that advisory committee meetings be open and accessible to the public, except in specific circumstances, FACA promotes accountability to the public. FACA establishes procedures to ensure that advisory committee meetings, and the records produced, are open and available to the public.
FACA Policies and Procedures

Users

Who are the intended users of FACA?

- Executive branch officials and others outside of the Federal Government currently involved with an established advisory committee
- Executive branch officials who seek to establish or utilize an advisory committee
- Executive branch officials and others outside the Federal 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
- Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service

Other types of end-users include individuals and organizations outside of the Federal Government who seek to understand and interpret the Act, or are seeking additional guidance.

Tool Kit

Utilize

Under FACA, a committee not established by the Federal Government is utilized if the executive branch manages or controls the committee. Learn the formal definition.

Learn More

Utilize

For the purposes of the Act, utilize 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 officer or agency exercises actual management or control over its operation.
FACA Policies and Procedures

Committee

What are the basic requirements regarding the use of Federal advisory committees?

Now that you know what FACA is and who should use it, you should know the basic requirements that govern the use of advisory committees. They are as follows:

- Determine need is in the public interest
- Fairly balanced membership
- Open meetings
- Advisory function only
- Terminate when no longer needed

Stated another way, you should use an advisory committee only if there is an essential need for expert knowledge or advice that lies outside of the Federal Government. Let's find out more about each requirement.

---

FACA Policies and Procedures

Committee

What are the basic requirements governing the creation and use of Federal advisory committees?

Determine need is in the public interest

An advisory committee that is not required by statute or Presidential directive may be established only when it is essential to the conduct of agency business and when the advice 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:

- Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business.
- Advisory committee recommendations will result in significant improvements in service or reductions in cost.
- Advisory committee recommendations will provide an important additional perspective or viewpoint affecting agency operations.
**FACA Policies and Procedures**

**Committee**

What are the basic requirements governing the creation and use of Federal advisory committees? (continued)

*Fairly balanced membership*

All advisory committees must be fairly balanced in their membership in terms of the points of view represented and the functions to be performed. As stated in Section 102-3.60(b)(3) of the GSA Final Rule, a cross-section of those directly affected, interested, and qualified will be considered.

**The Source**

Section 102-3.60(b)(3) of the GSA Final Rule provides guidance on how to achieve a fairly balanced membership. Get the information straight from the source.

**Learn More**

*Section 102-3.60(b)(3) of the GSA Final Rule*

A description of the agency's plan to attain fairly balanced membership 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.
**FACA Policies and Procedures**

**Committee**

What are the basic requirements governing the use of Federal advisory committees?

*Open meetings*

Advisory committee meetings must be open to the public, except where a closed or partially closed meeting meets an exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 522b(c), as the basis for closure.

**On Your Own**

When you first hear the title Government in the Sunshine Act, what associations or meanings are created in your mind?

Compare your impressions with the actual impact on advisory committees. Do they match?

**Learn More**

When you first hear the title Government in the Sunshine Act, what associations or meanings are created in your mind?

The title Government in the Sunshine Act implies that Government actions will be made transparent or accessible. When dealing with advisory committees, the Government in the Sunshine Act also identifies the limited legal circumstances in which advisory committee meetings can be partially or fully closed to the public.
**FACA Policies and Procedures**

**Committee**

*What are the basic requirements governing the use of Federal advisory committees? (continued)*

**Advisory function only**

The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive. Advisory committee members are not decisionmakers, but instead provide advice and recommendations through their committee to the decisionmakers in the executive branch. Let's look at a few examples:

a. An Environmental Health Committee reviews the agency's cancer guidelines and provides comments on the scientific basis of the guidelines. The agency decisionmaker decides whether (or not) to change the guidelines based on the committee's advice. In this case, the advisory committee is providing advice, but not directing policy. The action the agency takes as a result of the committee's advice may affect policy decisions.

b. Operational committees provide primarily a non-advisory function within an agency, with that function specifically authorized in the legislation or statute establishing the committee. Examples include committees making or implementing Government decisions or policy. Such committees are not common, and are typically not subject to FACA.

**Terminate when no longer needed**

An advisory committee must be terminated when any of the following is true:

- The stated objectives of the committee have been accomplished.
- 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.
- The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government.
**FACA Policies and Procedures**

**Committee**

What are the basic requirements governing the use of Federal advisory committees? (continued)

*Terminate when no longer needed (continued)*

- In the case of committees not required by statute or Presidential directive, upon the expiration of a period not to exceed two years, unless renewed
- In the case of an advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President
- In the case of an advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute
**FACA Policies and Procedures**

**Exceptions**

**When does FACA not apply?**

Not all committees or groups are subject to FACA; in fact, there are a number of exceptions identified by FACA. The following are examples of groups or committees not covered by the Act:

- Advisory committees of the Central Intelligence Agency (CIA) or the Federal Reserve System
- Committees exempted by statute
- Committees not actually managed or controlled by the executive branch
- Groups assembled to provide individual advice as opposed to collective advice
- Committees created by the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA), which must adopt separate procedures for complying with FACA

**Mind Meld**

If during an agency public town hall meeting 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?

**Learn More**

No, the public meeting need not be stopped because:

- A group must be "established" or "utilized" by the executive branch in order for FACA to apply.
- A town hall represents a chance for individuals to voice their opinions and/or share information. In that sense, agencies neither "establish" the assemblage of individuals as an advisory committee nor "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.
- Although reaching consensus is a desirable goal under FACA, group consensus on its own does not trigger application of the Act to the group.
**FACA Policies and Procedures**

**Exceptions**

**When does FACA not apply? (continued)**

Here are more examples of committees or groups not covered by the Act:

- Groups assembled to exchange facts or information
- 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.

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**FACA Policies and Procedures**

**Exceptions**

**When does FACA not apply? (continued)**

Here are more examples of committees or groups not covered by the Act:

- Intragovernmental committees – any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government. These also are known as interagency committees when more than one agency participates.
- Local civic groups – any local civic group whose primary function is that of rendering a public service with respect to a Federal program.
- 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.

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FACA Policies and Procedures

Exceptions

When does FACA not apply? (continued)

Here are more examples of committees or groups not covered by the Act:

- Operational committees – 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.

- Meetings with Federal officials initiated by a group for the purpose of expressing its view, provided that the group is not subject to strict Government management or control.

FACA Policies and Procedures

Review

Now you have learned about the purpose of FACA, the groups and committees to whom FACA may apply, the rules regarding the use of advisory committees, and groups and committees that are exempt from FACA. It's time to put it all together.

Think about some of your personal experiences with a Government committee or group. Do you think your group should have been subject to FACA? Why or why not? What were the determining factors that helped you to decide?
**FACA Policies and Procedures**

**Review**

One method of determining when FACA applies is to ask yourself these six questions:

1. **Who established the group?**
   - Mandated by statute or Presidential directive?
   - Initiated by an agency or authorized by statute?

2. **Who controls the group's activities?**
   - Actually managed or controlled by the executive branch?

3. **Who are the group's members?**
   - Composed wholly of full-time or permanent part-time officers or employees of the Federal Government?

4. **Does the group give advice?**
   - Individual or collective advice?
   - Only exchange facts or information?
   - Operational?

5. **Who is the group advising?**
   - State or local officials or agencies?
   - CIA or the Federal Reserve Board System?

6. **Does the group function collectively?**
   - Does it have an organized structure?
   - Does it have a fixed membership?
   - Does it give advice as a group?
**FACA Policies and Procedures**

**Review**

Let's walk through an example together.

**(Real) Example:**

The Clean Air Act Amendments of 1977 directed formation of the Clean Air Scientific Advisory Committee under the U.S. Environmental Protection Agency (EPA). The committee is controlled (managed) by and reports to the EPA Administrator. The committee membership is fixed at seven, with certain specific requirements defined in the statute, and is made up of non-Federal experts, one of whom is a state member. The group is subject to the open meeting requirements of FACA, deliberates in public, takes public comment, and provides written advice to the EPA. The Agency may implement (partly or in full) or may not implement the committee’s advice. However, if the advice is not implemented, the Agency should (as a best practice) tell the committee why not.
**FACA Policies and Procedures**

**Knowledge Check**

**Knowledge Check 1 of 6**

The Department of Energy sponsors the National Petroleum Council (NPC), a committee composed of energy experts and leaders from the oil and gas industries. The purpose of the NPC is to advise, inform, and make recommendations to the Secretary of Energy on matters pertaining to oil and natural gas or to the oil and gas industries.

**Please answer True or False:**

The NPC is a Federal advisory committee and follows FACA guidelines.

- True
- False

The correct answer is True. The NPC is covered by FACA because it is an advisory committee by definition. It is composed of non-Government experts and it was established by an agency for the purpose of providing advice or recommendations to an executive branch agency.
FACA Policies and Procedures

Knowledge Check

Knowledge Check 2 of 6

The Department of Energy has established an energy matters public forum, where any party interested in the national energy policy may participate in the discussion. The purpose of the forum is to allow interested parties to express and exchange viewpoints regarding energy consumption and use. The discussion is for informational purposes only.

Please answer True or False:

This energy matters public forum is a Federal advisory committee and follows FACA guidelines.

True
False

The correct answer is False. This energy matters public forum is not covered by FACA. Groups assembled to exchange facts or information are not covered by the Act. The public forum was held to allow interested parties to exchange viewpoints, not to provide recommendations.

FACA Policies and Procedures

Knowledge Check

Knowledge Check Scenario

Review the scenario below. All of the following questions will be based on this scenario.

Novice Ned has just started working at the Department of Energy. His boss, Manager Mary, has tasked him with leading the effort on the development of an energy plan to discover alternate energy sources. The only guidelines he has been given are that:

1) A variety of viewpoints must be included.
2) All of the recommendations must be substantiated by research or expert opinion.
3) A report with recommendations for an energy plan must be completed within 15 months.
**FACA Policies and Procedures**

**Knowledge Check**

**Knowledge Check Scenario (continued)**

Not having the expertise himself, Novice Ned decides he should consult with subject matter experts for help and guidance. He proposes his idea of consulting with subject matter experts to Manager Mary, who tells him to go ahead with the plan. However, the budget is very limited and cannot cover expensive consulting fees. Manager Mary suggests using an advisory committee to obtain expert advice for developing the plan. Uncertain of the protocol for creating and using advisory committees, Novice Ned turns to the FACA for answers.

Given the information above, please select the best answer to the questions that follow.

The correct answer is D. This committee matches the definition of an advisory committee.


FACA Policies and Procedures

Knowledge Check

Knowledge Check 4 of 6

When considering whether to establish an advisory committee, which of the following is not required to be considered under FACA but is an important agency consideration?

A. Functions in an advisory capacity only
B. Is essential to completing the task at hand
C. Cost is low
D. Membership is balanced

The correct answer is C. When using an advisory committee, there is no particular cost requirement; however, costs should be closely monitored to ensure that the funds expended to operate the committee are not excessive in relation to the benefits accrued to the Federal Government.

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FACA Policies and Procedures

Knowledge Check

Knowledge Check 5 of 6

Answer True or False:

Novice Ned is considered an intended user of FACA because his agency, part of the executive branch, is seeking to establish or utilize an advisory committee.

True

False

The correct answer is True. Executive branch officials who seek to establish or utilize an advisory committee are considered primary users of FACA.
FACA Policies and Procedures

Knowledge Check

Knowledge Check 6 of 6

Novice Ned's group is subject to FACA.

Select the statements below that describe situations wherein a group would be exempt from FACA:

✔️ Provide individual advice as opposed to collective advice.
✔️ Be composed wholly of full-time or permanent part-time officers or employees of the Federal Government.
✔️ Exchange facts or information.

☐ Committees utilized by the executive branch.

The correct answers are 1, 2, and 3. Situations 1, 2, and 3 are all situations described in Section 102-3.40 of the GSA Final Rule where a group would be exempt from FACA.

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FACA Policies and Procedures

Congratulations!

You have just successfully completed this lesson. To review any part of the lesson again, select the Course Map button and expand the menu to review a sublesson.
Lesson 2 – Life Cycle of a Federal Advisory Committee

Welcome to Lesson 2: Life Cycle of a Federal Advisory Committee

Introduction

Estimated time of completion = 25 minutes

Anyone undertaking the task of setting up an advisory committee needs to understand the entire life cycle that the committee must traverse. Of course, the Act provides guidelines for each phase of a Federal advisory committee—from creation to operation to termination.

This lesson primarily will focus on the creation and termination phases of an advisory committee.

FACA Facts

Advisory committees continue to represent an essential part of Federal efforts to increase public participation in government. As you go through this lesson, think back to the FACA Policies and Procedures lesson and recall the purpose of FACA. How does this lesson support FACA's purpose?

Learn More

How does this lesson support FACA's purpose?

Lesson 2 supports FACA's purpose by focusing on the necessary steps for establishing, renewing, re-establishing, and terminating Federal advisory committees. Remember that FACA:

- Defines what constitutes a Federal advisory committee.
- Provides general procedures for operating advisory committees.
- Assures that Congress and the public are kept informed.

For more information, please review Lesson 1: FACA Policies and Procedures. You can review the lesson by selecting the title under Course Map.
Life Cycle of a Federal Advisory Committee

Introduction

Lesson Objectives

Upon completion of Lesson 2, you will be able to:

- Identify the sources of authority for establishing Federal advisory committees.
- Describe the procedures required to establish, renew, and re-establish Federal advisory committees.
- Explain the guidelines affecting the termination of Federal advisory committees.

On Your Own

You can monitor your learning by becoming aware of how you process and store information in your mind.

Learn More

One way of monitoring your learning is to identify knowledge you already have about the subject and use that knowledge to help you make sense of the new information. Think about a group you have set up in the past. What steps did you take?

Write down those steps. As you go through this lesson, compare your procedures to those required to establish a Federal advisory committee. Look for similarities and how the new information fits into or modifies what you already know.
**Life Cycle of a Federal Advisory Committee**

**Authority**

Who has the authority to establish an advisory committee?

Proper authority must be in place before advisory committees can operate. FACA identifies four sources of authority for establishing advisory committees:

1. **Required by statute.** Congress establishes an advisory committee or specifically directs the President or an agency to establish it.
2. **Presidential authority.** The President issues an Executive Order or other Presidential directive to create an advisory committee.
3. **Authorized by statute.** Instead of requiring their establishment, Congress authorizes the President or an agency to create advisory committees.
4. **Agency authority.** Under Title 5 of the United States Code, or under other agency-authorizing statutes, an agency has the authority to establish advisory committees.

**On Your Own**

How can an advisory committee established by Congress (the legislative branch) be subject to FACA?

**Learn More**

How can an advisory committee established by Congress be subject to FACA?

According to the formal definition, an advisory committee can be established by statute (i.e., by the Congress). Congress has the authority to establish an advisory committee in the executive branch, or direct the executive branch to do so, but does not actually manage or control the committee.

**FACA Facts**

The majority of advisory committees are established because they are either required or authorized by statute. What is the distribution of Federal advisory committees by establishment authority?

**Learn More**

**Distribution of Federal Advisory Committees by Establishment Authority (FY 2011)**

<table>
<thead>
<tr>
<th>Committee Authority</th>
<th>Total</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>REQUIRED BY STATUTE</td>
<td>570</td>
<td>53%</td>
</tr>
<tr>
<td>AUTHORIZED BY STATUTE</td>
<td>199</td>
<td>18%</td>
</tr>
<tr>
<td>AGENCY AUTHORITY</td>
<td>266</td>
<td>25%</td>
</tr>
<tr>
<td>PRESIDENTIAL DIRECTIVE</td>
<td>44</td>
<td>4%</td>
</tr>
</tbody>
</table>
Life Cycle of a Federal Advisory Committee

Authority

Who has the authority to establish an advisory committee? (continued)

Non-discretionary vs. Discretionary

Depending on the source of authority, an advisory committee is considered to be either non-discretionary or discretionary.

A **non-discretionary advisory committee** is any advisory committee required either by statute or by Presidential directive, and its establishment or termination is beyond the legal discretion of an agency head.

A **discretionary advisory committee** is any advisory committee that is established under the authority of an agency head or authorized by statute, and its establishment or termination is within the legal discretion of an agency head.

FACA Facts

The Marine Fisheries Advisory Committee meets the definition of an advisory committee and was established under the authority of the Department of Commerce. What type of advisory committee is it?

Learn More

The Marine Fisheries Advisory Committee is a discretionary advisory committee because:

- It was established under agency authority.
- It meets the definition of an advisory committee.
- The establishing agency is part of the executive branch.
Life Cycle of a Federal Advisory Committee

Establish

What is the procedure required to establish, renew, or re-establish a committee?

Now that you have the authority for establishing an advisory committee, you must initiate the FACA procedures for establishing the committee. The procedure you use depends on whether a committee is a discretionary or non-discretionary committee.

For discretionary advisory committees, FACA identifies three milestones that must be met before an advisory committee can start its operation. The sponsoring agency of the advisory committee is required to:

- Consult with the GSA Committee Management Secretariat ("Secretariat").
- Notify the public of the committee's establishment.
- File the committee charter with the appropriate persons/institutions.
Life Cycle of a Federal Advisory Committee

Establish

What is the procedure required to establish, renew, or re-establish a committee? (continued)

For non-discretionary committees, however, FACA does not require the sponsoring agency to consult with the Secretariat (though it is a best practice) or notify the public. The only requirement is to file the committee charter.

Each step must be completed before the sponsoring agency can proceed to the next step. Let's discuss each of the steps in detail.

On Your Own

For non-discretionary advisory committees, why are you not required to consult with the Secretariat or notify the public?

Learn More

For non-discretionary advisory committees, why are you not required to consult with the Secretariat or notify the public?

You are not required to consult with the Secretariat or notify the public because non-discretionary advisory committees are required to be established and notification has already been given to the public through publication of the law or Presidential directive. Generally, you must consult with the Secretariat to demonstrate that the advisory committee is necessary to your agency and that its establishment is in the public interest. Since a non-discretionary advisory committee is required by law or Presidential directive, these determinations already have been made in public documents (i.e., statutes or Executive orders).
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee?

Consult with the Secretariat

For a discretionary advisory committee, the first step the sponsoring agency must take is to consult with the Secretariat. The purpose of this consultation is to obtain the Secretariat's input on the agency's intent to establish a discretionary advisory committee.

Mind Meld

Who retains final authority for establishing, renewing, or re-establishing a discretionary advisory committee?

Learn More

Who retains final authority for establishing, renewing, or re-establishing a discretionary advisory committee?

Although agency heads retain final authority for establishing, renewing, or re-establishing discretionary advisory committees, these decisions should be consistent with Section 102-3.105(e) and reflect consultation with the Secretariat under Section 102-3.60(a) of the GSA Final Rule.

Section 102-3.105(e) requires the agency head to 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.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

Consult with the Secretariat (continued)

By providing enough information on the background and rationale for the proposed advisory committee, the sponsoring agency can draw on the Secretariat's knowledge and experience regarding:

- How best to make use of the proposed advisory committee.
- Alternate methods to consider for attaining the proposed goal.
- Information on pre-existing advisory committees performing similar functions.

What kind of background information should the sponsoring agency provide to the Secretariat during a consultation?
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

Consult with the Secretariat (continued)

The sponsoring agency must submit a justification for the establishment of the proposed discretionary advisory committee, and the justification must include demonstration of the following, at minimum:

- Explanation of need
- Lack of duplicate resources
- Fairly balanced membership

Each of these requirements is addressed in more detail in the following slides.

Mind Meld

You were in charge of establishing the Marine Fisheries Advisory Committee (which was established under agency authority). Did you need to consult with the Secretariat?

Learn More

Did you need to consult with the Secretariat?

Yes, you would have consulted with the Secretariat because your committee is a discretionary advisory committee. Discretionary advisory committees, which are initiated by an agency under its own authority or authorized by statute, require consultation with the Secretariat.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

Consult with the Secretariat (continued)

Explanation of need – Why is this advisory committee necessary? The agency must explain why the proposed committee is essential to the conduct of agency business and is in the public interest.

Lack of duplication of resources – Is there an alternate method to performing the committee functions? The agency must also show that the functions of the proposed committee cannot be performed by the agency, another existing committee, or other means such as a public hearing.
**Life Cycle of a Federal Advisory Committee**

**Procedures**

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

*Consult with the Secretariat (continued)*

**Fairly balanced membership** – How will you ensure that a variety of viewpoints are represented on the committee? The agency must also describe 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 performed.

**Mind Meld**

What factors should be considered in achieving a "balanced" advisory committee membership?

**Learn More**

What factors should be considered in achieving a "balanced" advisory committee membership?

The composition of an advisory committee's membership will depend upon several factors, including:

- The advisory committee's mission
- The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations
- The types of specific perspectives required (e.g., consumers, technical experts, the public at large, academia, business, or other sectors)
- The need to obtain divergent points of view on the issues before the advisory committee
- The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations
**Life Cycle of a Federal Advisory Committee**

**Procedures**

**What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)**

*Notify the Public*

When the consultation for the discretionary advisory committee has been completed, the sponsoring agency must notify the public. A notice to the public must be published in the *Federal Register* announcing that the advisory committee is being established, renewed, or re-established.

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.

**Tool Kit**

View an example of a public notice regarding the establishment of a new Federal advisory committee.

**Learn More**

[Sample of an Establishment Notice](#)
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

Notify the Public (continued)

The Notice of establishment and re-establishment of discretionary advisory committees must appear at least 15 calendar days before the charter is filed. (We will discuss what needs to be included in the charter in a few minutes.) However, the Secretariat may approve fewer than 15 calendar days if the agency provides good cause for the request.

This requirement for advance notice does not apply to discretionary advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

Mind Meld

You plan to file a charter establishing the Marine Fisheries Advisory Committee on April 1. What is the latest date by which the public notice must appear in the Federal Register?

Learn More

What is the latest date by which the public notice must appear in the Federal Register? The latest date on which the notice to the public must appear is March 16, since you are planning to file the charter on April 1. The Notice must appear in the Federal Register at least 15 calendar days before the charter is filed. Because your committee is a discretionary advisory committee, you must notify the public of your intent to establish the committee.
**Life Cycle of a Federal Advisory Committee**

**Procedures**

**What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)**

*File the Charter*

Lastly, the charter must be filed with the appropriate persons/institutions. No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) or by another agency official designated by the agency head. (You will learn more about the role of the CMO and agency head in Lesson 3.)

The charter filing requirements differ depending on whether the committee is discretionary or non-discretionary. Let us examine the requirements for a discretionary advisory committee.

**Tool Kit**

**Who is the Committee Management Officer (CMO)?**

Each agency has a CMO who is responsible for the management of that agency's advisory committee program. Learn the formal definition.

**Learn More**

**Committee Management Officer (CMO)**

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.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

File the Charter (continued)

For discretionary advisory committees, a charter must be filed with the following persons/institutions:

- The agency head
- The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency
- The Library of Congress
- The Committee Management Secretariat

Tool Kit

What is the address of the Library of Congress in order to file a charter?

Learn More

Address for the Library of Congress

Federal Advisory Committee Desk
United States Government Documents Section
U.S. Anglo Acquisitions Division
Library of Congress
101 Independence Avenue,
SE. Washington, DC 20540-4174
**Life Cycle of a Federal Advisory Committee**

**Procedures**

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

*File the Charter (continued)*

The official date of establishment is determined as the date the charter is filed with the Senate and the House of Representatives. When filing the charter with the Secretariat, be sure to include the date the charter was filed with Congress.

**Mind Meld**

You actually filed the charter with Congress on April 15 and with the Secretariat on April 20 to establish the Marine Fisheries Advisory Committee. Which date is the official date of establishment?

**Learn More**

Which date is the official date of establishment?

The official date of establishment is April 15—the date on which the charter is filed with Congress.

---

**Life Cycle of a Federal Advisory Committee**

**Procedures**

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

*File the Charter (continued)*

For non-discretionary advisory committees, charter-filing requirements are the same as for discretionary advisory committees. The only difference is that for a Presidential advisory committee, the date of establishment is the date the charter is filed with the Secretariat.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

File the Charter (continued)

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. Therefore, the charter must contain the information listed on the following pages.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

File the Charter (continued)

The charter must also contain:

- The name of the agency (and component/office) responsible for providing necessary support for the advisory committee.
- Estimated annual fiscal year costs to operate the advisory committee in dollars and staff years.
- The estimated number and frequency of the advisory committee's meetings within a fiscal year.
Life Cycle of a Federal Advisory Committee

Procedures

What is the procedure required to establish, renew, or re-establish a Federal advisory committee? (continued)

File the Charter (continued)

The Secretariat also requires that the charter contain:

- The advisory committee establishment authority.
- A statement that a full-time or permanent part-time Federal employee will serve as the Designated Federal Officer (DFO) for the advisory committee and a brief description of the DFO responsibilities.
- An estimate of the number of members, a description of the expertise required, and/or groups to be represented on the advisory committee in order to achieve a fairly balanced membership, and member designation categories to be included on the committee.
- A statement as to whom (i.e., the agency) has the authority to create subcommittees and that subcommittees must report back to the parent advisory committee, and must not report directly to the agency.
- A statement that the records of the committee and any subcommittees will be handled in accordance with the appropriate U.S. National Archives and Records Administration's (NARA) and the agency's approved record schedule.

Tool Kit

View examples of Presidential, statutory, and agency authority charters.

Learn More

http://www.gsa.gov/portal/content/168831
FACA Facts

How are minor charter amendments accomplished?

Learn More

How are minor charter amendments accomplished?
The agency head is responsible for amending the charter of an advisory committee. 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. To make a minor amendment, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the procedures below must be followed.

Non-discretionary advisory committees:

- The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority.
- The agency head must amend those sections of the current charter affected by the new statute or Executive Order.
- File the amended charter as required.

Discretionary advisory committees:

- If the agency head determines that technical provisions are inaccurate, or specific provisions have changed or become obsolete, 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 required.
**Life Cycle of a Federal Advisory Committee**

**Termination**

What are the guidelines for terminating advisory committees?

When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination. An advisory committee automatically terminates 2 years after its date of establishment unless:

- The statutory authority used to establish the advisory committee provides a different duration.
- The President or agency head terminates the advisory committee earlier because the advisory committee:
  - Has fulfilled the purpose for which it was established.
  - Is no longer carrying out the purpose for which it was established.
- The President or agency head renews the committee no later than 2 years after its date of establishment.

**Mind Meld**

If an advisory committee's duration exceeds 2 years, must a charter be filed with Congress and GSA every 2 years?

**Learn More**

If an advisory committee's duration exceeds 2 years, must a charter be filed with Congress and the Secretariat every 2 years?

Yes, a charter must be filed with Congress and the Secretariat every 2 years even if an advisory committee's duration is more than 2 years.

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 2-year period following the date of enactment of the Act establishing such advisory committee.
Mind Meld

You actually filed the charter with Congress on April 15, 2004, and with the Secretariat on April 20, 2004. When will the committee terminate?

Learn More

You actually filed the charter with Congress on April 15, 2004, and with the Secretariat on April 20, 2004. When will the committee terminate?

Your committee will terminate April 15, 2006, because your date of establishment was April 15, 2004. Advisory committees automatically terminate 2 years from the date of establishment, unless the law specifies a different duration or the committee is terminated earlier.

FACA Facts

What happens if an advisory committee established by an agency terminates unintentionally?

Learn More

What happens if an advisory committee established by an agency terminates unintentionally?

If an advisory committee established by an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of Section 102-3.30(b) of the GSA Final Rule, it can be re-established in accordance with Section 102-3.60, which states that the agency head must consult with the Secretariat.
Life Cycle of a Federal Advisory Committee

Knowledge Check

Knowledge Check 1 of 5

With some exceptions, discretionary advisory committees under FACA automatically terminate:

A. On the completion of their final report.
B. Two years after they are established.
C. Twenty-four months after their initial meeting.
D. Within 6 months of completion of the final report.

The correct answer is B. With some exceptions, a discretionary advisory committee automatically terminates 2 years after its date of establishment.

Life Cycle of a Federal Advisory Committee

Knowledge Check

Knowledge Check 2 of 5

Discretionary advisory committees are established under the authority of:

A. The President or statutory requirement.
B. The President or an agency.
C. An agency or a statutory authorization.
D. Statutory requirement or statutory authorization.

The correct answer is C. Discretionary advisory committees are established under the authority of an agency or are authorized, but not required, by statute.
Life Cycle of a Federal Advisory Committee

Knowledge Check

Knowledge Check 3 of 5

A public notice announcing the establishment of a discretionary advisory committee must appear in the Federal Register:

A. Fifteen calendar days before the charter is filed.
B. Fourteen working days before the charter is filed.
C. Fourteen calendar days after the charter is reviewed by the Secretariat.
D. Fifteen working days after the charter is reviewed by the Secretariat.

The correct answer is A. A public notice must appear in the Federal Register 15 calendar days before the charter is filed.

Life Cycle of a Federal Advisory Committee

Knowledge Check

Knowledge Check 4 of 5

Answer True or False:

For a non-discretionary advisory committee, the sponsoring agency must consult with the Secretariat before establishing the committee.

True

False

The correct answer is False. Agencies are not required to consult with the Secretariat to establish non-discretionary advisory committees. Agencies only are required to consult with the Secretariat to establish discretionary advisory committees.
Life Cycle of a Federal Advisory Committee

Knowledge Check

Knowledge Check 5 of 5

The official date of establishment of an advisory committee (except for Presidential advisory committees) is the date the charter is filed with the:

A. Agency head.
B. Standing committees of the Senate and the House of Representatives.
C. Library of Congress.
D. Secretariat.

The correct answer is B. The official date of establishment is the date the charter was filed with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency.

Life Cycle of a Federal Advisory Committee

Congratulations!

You have just successfully completed this lesson. To review any part of the lesson again, select the Course Map button and expand the menu to review a sublesson.
Lesson 3 – Roles and Responsibilities

Welcome to Lesson 3 – Roles and Responsibilities

Introduction

Estimated time of completion = 15 minutes

This lesson will help you gain a working knowledge of how key individuals are tasked to manage an advisory committee under FACA. The Act takes into account the necessity of certain roles in order to ensure the successful accomplishment of each committee's objectives. Therefore, FACA has identified the major players involved, and exactly what role they are to play, in the establishment, management, operation, and termination of a Federal advisory committee.

Own Your Own

Can you identify the key players involved in establishing a discretionary advisory committee?

Learn More

Can you identify the key players involved in establishing a discretionary advisory committee?

The key players are the Secretariat, the agency head, and the Committee Management Officer (CMO). When establishing a discretionary advisory committee:

- The committee sponsor, usually through the CMO, must consult with the Secretariat.
- The agency must publish a notice to the public in the Federal Register 15 calendar days before filing the charter.
- The CMO must file a charter with the agency head, the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the Library of Congress, and the Secretariat.

For more information, please review Lesson 2: Life Cycle of a Federal Advisory Committee.
Roles and Responsibilities

Introduction

Lesson Objectives

Upon completion of Lesson 3, you will be able to:

- Identify the following roles within the FACA process:
  - GSA Committee Management Secretariat ("Secretariat")
  - Agency head
  - Committee Management Officer (CMO)
  - Designated Federal Officer (DFO)
  - Advisory committee members and staff
- Describe the responsibilities of each role.
Roles and Responsibilities

Introduction

How does this affect me?

Now that you have determined that your group or committee is subject to FACA and understand what you must do to establish it, you need to identify the major players who will impact your committee throughout its life cycle. This lesson will help you recognize who is responsible for performing the required tasks specified by FACA.

This lesson will start at the "big picture" level and work down to the "hands-on" management level.

Own Your Own

You can monitor your own learning by becoming aware of how you process and store information in your mind.

Learn More

One way of monitoring your learning is to identify knowledge you already have about the subject and to use that knowledge to help you make sense of the new information. Think about a group or organization of which you were a member in the past. What kind of role did you play? Were specific roles identified? Were definite responsibilities assigned to each role? Write down your answers to these questions.

As you learn about the major players identified by FACA, determine how these roles fit into your current understanding of organizational or group structure. Do you think it is beneficial for FACA to identify specific roles and responsibilities? Draw on your own personal experiences as a reference.
Roles and Responsibilities

Key Players

Who are the key players identified by FACA?

FACA opened Government decisionmaking processes to the public by providing structure for the establishment and use of Federal advisory committees. As such, FACA clearly identifies key players who will be involved in the life cycle of an advisory committee.

These key players include:

- Secretariat – organization specifically identified in FACA as responsible for all matters relating to advisory committees at the "big picture" level
- Agency head – head of each agency or department that acts as the sponsor for establishing or utilizing advisory committees in that agency
- Committee Management Officer (CMO) – individual appointed at the agency level who is responsible for managing the FACA program at their agency and for maintaining committee records:

Roles and Responsibilities

Key Players

Who are the key players identified by FACA? (continued)

In addition to the three previous roles, FACA has identified key players who will be involved at a more "hands-on" level:

- Designated Federal Officer (DFO) – individual responsible for the day-to-day operations of an advisory committee
- Advisory committee member – individual who is appointed or invited to serve on an advisory committee to provide advice
- Advisory committee staff – any individual, either a Federal Government employee or private individual, who serves in a support capacity to an advisory committee

To recap, the DFO, committee member, and committee staff are involved with FACA operations at the advisory committee level; the Secretariat is responsible for oversight of Federal advisory committees Government-wide; and agency heads and their CMOs are responsible for the oversight and management of all committees at their agencies. Let’s examine each of the roles in greater detail.
Roles and Responsibilities

Secretariat

What are the responsibilities of the Secretariat?

The GSA Committee Management Secretariat is the organization responsible for all matters relating to advisory committees. Section 7 of the Act requires the GSA to undertake the following responsibilities:

- Prepare regulations on Federal advisory committees.
- Issue other administrative guidelines and management controls for advisory committees.
- Assist other agencies in implementing and interpreting the Act.

FACA Facts

The General Services Administration (GSA) was designated by the President in 1977 to oversee committee activities Government-wide, and the GSA Administrator delegated these responsibilities to the GSA Committee Management Secretariat.

Roles and Responsibilities

Secretariat

What are the responsibilities of the Secretariat? (continued)

The Secretariat carries out its responsibilities and functions by:

- Conducting an annual comprehensive review of advisory committee accomplishments, costs, and benefits.
- Developing and distributing Government-wide training on FACA and related statutes.
- Supporting the Interagency Committee on Federal Advisory Committee Management and the FACA Attorney Council.
- Designing and maintaining a shared Internet-based system to collect and report data required by FACA.
- Identifying performance measures that may be used to evaluate advisory committee accomplishments.
- Providing recommendations for transmittal to Congress and the President on proposals to improve achievement of FACA objectives.
Roles and Responsibilities

Agency Head

What are the responsibilities of an agency head?

The agency head is responsible for advisory committees established or utilized by the agency. Ultimately, as the sponsor, the agency head must keep current on the status of all the advisory committees under that agency's jurisdiction. Under FACA, the agency head's responsibilities can be classified as two-tiered: responsibilities that manage advisory committees at the agency level, and responsibilities that are more directed at the committee level.

Tool Kit

For an independent Presidential advisory committee, the chairperson acts in a similar capacity as the agency head. What are the responsibilities of the chairperson?

Learn More

What are the responsibilities of the chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

- Comply with FACA.
- Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO).
- Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

An independent Presidential advisory committee is any Presidential advisory committee not assigned by Congress in law, or by the President or the President's delegate, to an agency for administrative and other support.
Roles and Responsibilities

Agency Head

What are the responsibilities of an agency head? (continued)

At the agency level, the agency head is responsible for FACA awareness and compliance. The head of each agency must:

- Comply with FACA.
- Issue agencywide administrative guidelines and management controls that apply to all advisory committees subject to FACA.
- Designate a CMO.
- Annually review the need to continue each existing advisory committee.
- 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.

On Your Own

The agency head determines whether or not existing advisory committee(s) are needed. What criteria do you think the agency head might use to determine if the committee(s) are necessary?

Learn More

What criteria do you think the agency head might use to determine if existing committee(s) are necessary?

The agency head determines the necessity of an advisory committee by ensuring that the committee continues to be essential to the conduct of agency business, provides information that is not readily available through another advisory committee or other means, and is therefore in the public's best interest to continue.

Criteria that could assist in this determination include whether:

- The stated objectives of the committee have been accomplished.
- The subject matter or work of the committee continues to remain relevant, and the functions of the committee have not been assumed by another entity.
- The cost of operating the committee is not excessive in relation to the benefits accruing to the Federal Government.
Roles and Responsibilities

Agency Head

What are the responsibilities of an agency head? (continued)

The Act also identifies agency head responsibilities directed at the committee level. The head of each agency must:

- Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in accordance with the exemptions of the Government in the Sunshine Act.
- 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), and other Federal ethics rules.
- Determine that rates of compensation for members, staff, experts, and consultants are justified and that levels of agency support are adequate.
- Designate a DFO for each advisory committee and its subcommittees.
- Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to Section 102-3.140 of the GSA FACA Final Rule and the agency's guidelines.

The Source

The Government in the Sunshine Act, 5 U.S.C. 552b(c), provides the basis for closing a Federal advisory committee meeting to the public. Get the information straight from the source.

Learn More

Government in the Sunshine Act

Mind Meld

Must an agency's CMO and each advisory committee DFO be appointed by the agency head?

Learn More

Must an agency's CMO and each advisory committee DFO be appointed by the agency head?

No, the agency head may delegate responsibility for appointing the CMO and DFOs to another agency official. However, these appointments, including alternate selections, should be documented consistent with the agency's policies and procedures.
Roles and Responsibilities

CMO/DFO

What are the responsibilities of a CMO?

Designated by, or on behalf of, the agency head at the agency level, the CMO is responsible for the agency's advisory committee management program. The CMO acts as the point of contact within an agency regarding FACA regulations, guidelines, and best practices. The CMO's overall responsibilities are to:

- Exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency.
- Assemble and maintain the reports, records, and other papers of any such committee during its existence.
- Carry out, on behalf of that agency, the provisions of Section 552 of Title 5 of the United States Code with respect to such reports, records, and other papers.
- Carry out all responsibilities delegated by the agency head.
Roles and Responsibilities

CMO/DFO

What are the responsibilities of a CMO? (continued)

Control and Supervision over Committee Establishment

The CMO must ensure that the charter is properly filed. In addition to filing the charter, the CMO should ensure that:

- 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 until the advisory committee ceases to exist.
- Records are kept that fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities.
- At least eight copies of each report made by every advisory committee—and, where appropriate, background papers prepared by consultants—are filed with the Library of Congress.

Mind Meld

May an agency head delegate to the CMO the responsibility for consulting with the Secretariat regarding the establishment, renewal, or re-establishment of discretionary advisory committees?

Learn More

May an agency head delegate to the CMO the responsibility for consulting with the Secretariat regarding the establishment, renewal, or re-establishment of discretionary advisory committees?

Yes, an agency head may delegate to the CMO the responsibility for consulting with the Secretariat. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, re-establishment, or termination of discretionary advisory committees are reserved for the agency head.
Roles and Responsibilities

CMO/DFO

What are the responsibilities of a CMO? (continued)

Recordkeeping Requirements

The CMO is accountable for maintaining records and information regarding the agency's advisory committees. Records to be kept by the CMO include, but are not limited to:

- Charter and membership documentation – a set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee
- 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 Section 102-3.175(b) of the GSA FACA Final Rule
- Agency guidelines – agency guidelines maintained and updated on committee management operations and procedures
- Closed meeting determinations – agency determinations to close or partially close advisory committee meetings required by Section 102-3.105 of the GSA FACA Final Rule

FACA Facts

In the case of an independent Presidential advisory committee, the chairperson consults with the Secretariat regarding the designation of the CMO.
Roles and Responsibilities

CMO/DFO

What are the responsibilities of a DFO?

The DFO is an individual who has been designated by the agency head (or his/her delegate) to oversee the management and operation of an advisory committee and/or its subcommittees. The individual must be either a full-time or permanent part-time Federal officer or employee. The DFO, who is responsible for managing the day-to-day operations of an advisory committee, must:

- Approve or call the meeting of the advisory committee or subcommittee.
- Approve the agenda.
- Attend the meetings.
- Chair the meeting when so directed by the agency head.
- Adjourn any meeting when he or she determines it to be in the public interest.

FACA Facts

In the case of an independent Presidential advisory committee, the Secretariat will designate the DFO. The DFO is not required to approve the agenda for Presidential advisory committee meetings.
Roles and Responsibilities

Members

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, CMOs, and DFOs should consider the distinctions between these roles and how they relate to each other when developing agency guidelines for the implementation of FACA.

Tool Kit

Committee members are individuals asked to provide advice. Learn the formal definition.

Learn More

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

Tool Kit

Committee staff are Federal employees, or others who serve in a support capacity to advisory committee members. Learn the formal definition.

Learn More

Committee staff
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.
Roles and Responsibilities

Members

How should agencies consider the roles of advisory committee members and staff? (continued)

Agency guidelines delineating the responsibilities of committee members and staff should reflect:

- Clear operating procedures – These 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.
- Agency operating policies – In addition to compliance with FACA, advisory committee members and staff may be required to adhere to additional agency operating policies.
- 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.

FACA Facts

What should be included in Federal advisory committee bylaws (i.e., operating procedures)?

Learn More

What should be included in Federal advisory committee bylaws?

Bylaws are the written rules that govern the operation of a Federal advisory committee, and the content is at the discretion of the agency. As a best practice, bylaws should include:

- Committee purpose/authority
- Roles of the Chair, DFO, and committee staff
- Agency procedures for filling vacancies and creating subcommittees
- Agency subcommittee policy and procedures
- Meeting procedures, including any voting or quorum requirements
- Agency public comment policy
- Procedures for minutes and other records
- Procedures for developing reports and recommendations
- Agency travel/per diem policies, if applicable
Roles and Responsibilities

Knowledge Check

Knowledge Check

Now that you have reviewed the objectives of this lesson, let's check your understanding. You can gauge your knowledge of the material by answering a few questions about the key players that the Federal Advisory Committee Act has identified and exactly what role they play in the establishment, management, operation, and termination of a Federal advisory committee. Remember, the lesson will not be finished until you complete the Knowledge Checks.

You will be given questions in either a multiple-choice or true/false format. Select an answer by clicking or typing the letter of your choice.

Are you ready? Here we go!

Roles and Responsibilities

Knowledge Check

Knowledge Check 1 of 7

Answer True or False:

It is the responsibility of the agency head to designate a single CMO for the agency and a DFO for every advisory committee.

True

False

The correct answer is True. One aspect of the responsibilities of the agency head is to designate a CMO for the agency and a DFO for each committee and subcommittee.
**Roles and Responsibilities**

**Knowledge Check**

**Knowledge Check 2 of 7**

Which of the following tasks is not a responsibility of the Secretariat?

- A. Conducting an annual comprehensive review of advisory committee activities and costs
- B. Designing and maintaining a shared Internet-based system to collect and report data required by FACA
- C. Providing a written determination stating the reasons for closing any advisory committee meeting to the public
- D. Developing and distributing Government-wide training on FACA

The correct answer is C. It is not the responsibility of the Secretariat to provide a written determination stating the reasons for closing any advisory committee meeting to the public. The agency head is responsible for this requirement.

**Roles and Responsibilities**

**Knowledge Check**

**Knowledge Check 3 of 7**

Answer True or False:

The agency head designates a CMO for each of the agency's advisory committees.

- True
- False

The correct answer is False. There is only one CMO at the agency level. DFOs are appointed for each advisory committee.
Roles and Responsibilities

Knowledge Check

Knowledge Check 4 of 7

The DFO's responsibilities include the following, except for:

A. Approving or calling the meeting of the advisory committee.
B. Approving the agenda.
C. Attending meetings.
D. Determining rates of compensation for members, staff, experts, and consultants of an advisory committee.

The correct answer is D. The DFO is responsible for each of these, except for determining the rate of compensation. That task is the responsibility of the agency head. The DFO is responsible for all aspects involving the conduct of an advisory committee meeting.

Roles and Responsibilities

Knowledge Check

Knowledge Check 5 of 7

Answer True or False:

FACA clearly identifies and assigns responsibilities to advisory committee members.

True

False

The correct answer is False. FACA does not assign any specific responsibilities to members of advisory committees.
Roles and Responsibilities

Knowledge Check

Knowledge Check 6 of 7

Select the correct statements below for a discretionary committee:

- The CMO files the charter.
- The Secretariat sponsors the committee.
- The Secretariat, agency head, and CMO are involved in committee establishment.
- The DFO does not need to attend all of the committee meetings.
- The CMO is responsible for providing a written determination stating the reasons for closing an advisory committee meeting to the public.
- The agency head reviews, at least annually, the need to continue the advisory committee.

The correct answers are 1, 3, and 6. In a discretionary committee, the CMO files the charter, the Secretariat, agency head, and CMO are involved in committee establishment, and the agency head reviews, at least annually, the need to continue each existing advisory committee.
## Roles and Responsibilities

### Knowledge Check

**Knowledge Check 7 of 7**

Match the key players in the left-hand column with their responsibilities in the right-hand column by dragging or typing the corresponding letter into the correct field. The key players can be matched more than once.

<table>
<thead>
<tr>
<th>Key Players</th>
<th>Responsibilities</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Secretariat</td>
<td>□ Issues agency administrative guidelines and controls for Federal advisory committees</td>
</tr>
<tr>
<td></td>
<td>□ Keeps a set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee</td>
</tr>
<tr>
<td>B Agency head</td>
<td>□ Approves or calls meetings of an advisory committee or subcommittee</td>
</tr>
<tr>
<td></td>
<td>□ Develops procedures to assure Federal advisory committee advice is not inappropriately influenced</td>
</tr>
<tr>
<td>C CMO</td>
<td>□ Designed and maintains a shared Internet-based system to collect and report data required by FACA</td>
</tr>
<tr>
<td></td>
<td>□ Provides the opportunity for reasonable participation by the public in advisory committee activities</td>
</tr>
<tr>
<td>D DFO</td>
<td>□ Must attend Federal advisory committee and subcommittee meetings</td>
</tr>
<tr>
<td></td>
<td>□ Conducts an annual comprehensive review of advisory committees</td>
</tr>
<tr>
<td></td>
<td>□ Maintains records and information regarding an agency's advisory committees</td>
</tr>
</tbody>
</table>

Correct answers are:

**The Secretariat:**
- Designs and maintains a shared Internet-based system to collect and report data required by FACA.
- Conducts an annual comprehensive review of advisory committees.

**The agency head:**
- Issues agency administrative guidelines and controls for Federal advisory committees.
- Provides the opportunity for reasonable participation by the public in advisory committee activities.
- Develops procedures to assure Federal advisory committee advice is not inappropriately influenced.

**The CMO:**
- Keeps a set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee.
- Maintains records and information regarding an agency's advisory committees.

**The DFO:**
- Approves or calls meetings of an advisory committee or subcommittee.
- Must attend Federal advisory committee and subcommittee meetings.
Roles and Responsibilities

Congratulations!

You have just successfully completed this lesson. To review any part of the lesson again, select the Course Map button and expand the menu to review a sublesson.
Lesson 4 – Federal Advisory Committee Management

Welcome to Lesson 4: Federal Advisory Committee Management

Introduction

Estimated time of completion = 20 minutes

The Federal Advisory Committee Act (FACA) Final Rule sets forth five principles agencies are encouraged to apply to the operation and management of all active advisory committees. This lesson treats each governing principle in depth because together they embody the spirit of the Act. They also are important determinants for selecting committee members and staff and for managing committee activities.

Once a committee is established, the operational steps necessary to initiate and manage committee activities become a priority. This lesson addresses FACA requirements for selecting and compensating members and other staff. Meeting management is addressed in Lesson 5.

Own Your Own

As you go through this lesson, think back to the Roles and Responsibilities lesson and recall who is involved at the committee level. Which role is most involved with the management of a specific advisory committee?

Learn More

Which role is most involved with the management of a specific advisory committee?

The Designated Federal Officer (DFO) is the individual most involved with the management of a specific advisory committee. The DFO is responsible for managing the day-to-day operations and must:

- Approve or call the meeting of the advisory committee or subcommittee.
- Approve the agenda.
- Attend the meeting.
- Adjourn any meeting when he or she determines it to be in the public interest.
- Chair the meeting when so directed by the agency head.

For more information, please review Lesson 3: Roles and Responsibilities.
Federal Advisory Committee Management

Introduction

Lesson Objectives

When you complete Lesson 4, you will be able to:

- Identify guidelines for operating and managing Federal advisory committees.
- Describe the FACA requirements for selecting Federal advisory committee members.
- Explain the compensation policy for advisory committee members, staff, experts, and consultants under FACA.
Federal Advisory Committee Management

Introduction

How does this affect me?

Now that you have established your committee in accordance with FACA, you need to begin staffing the advisory committee. Committee members need to be appointed or invited to serve on your advisory committee, and agency staff need to be selected to support the committee’s activities. This lesson will inform you of general FACA principles which apply to the day-to-day operation of an actual advisory committee.

First, you will review the underlying management principles set forth in the FACA Final Rule. Next, you will learn the parameters governing how advisory committee members and staff are selected and compensated.

Own Your Own

You can monitor your own learning by becoming aware of how you process and store information in your mind.

Learn More

One way of monitoring your learning is to identify knowledge you already have about the subject and using that knowledge to help you make sense of the new information. Think about a project or group that you were a member of or have managed in the past. Was there a prevailing management style? How were members selected and what was their function? Were they compensated for their work?

Write down your answers to these questions and other questions you may have. As you go through this lesson, compare your personal experiences with what FACA requires. Look for similarities and how the new information fits into or modifies your conception of committee management.
Federal Advisory Committee Management

Principles

What are the principles for managing a Federal advisory committee?

When managing advisory committees, agencies are encouraged to apply the following five principles:

- Provide adequate support.
- Focus on mission.
- Follow plans and procedures.
- Practice openness.
- Seek feedback.

These principles act as guidelines or "best practices" for managing advisory committees subject to FACA. Let us discuss each of the principles in detail.

Provide Adequate Support

Even before a committee is established, the agency must identify committee needs and allocate the resources necessary for committee activities. These resources might encompass office space, supplies, equipment, and other tangible assets such as the availability of Federal staff to support the committee. More subtle requirements that need to be addressed are process-related. For example, committee members should have access to key decisionmakers within the agency.
Federal Advisory Committee Management

Principles

What are the principles for managing a Federal advisory committee? (continued)

Focus on Mission

Everyone involved should be fully aware of the advisory committee's mission, duties, and limitations (if any), as well as the agency's goals and objectives for establishing the advisory committee. Frequent reference to these high-level structural elements throughout the committee's life cycle will help keep everyone on track to reach the original goals and fulfill the mission of the advisory committee.

Follow Plans and Procedures

Many procedural guidelines and controls that apply to FACA committees usually are already in place within the agency and are subject to ongoing review and revision. For example, agency-specific practices for member and staff responsibilities and compensation usually already exist. In addition to existing procedures, advisory committee members and their agency sponsors should work together to assure that a plan and the necessary procedures covering implementation are in place to support an advisory committee's mission. Agencies need to provide clear guidance regarding what functions an advisory committee can legally perform and what it cannot.
Federal Advisory Committee Management

Principles

What are the principles for managing a Federal advisory committee? (continued)

Practice Openness

In addition to achieving the minimum standards of public access established by FACA, agencies should seek to be as inclusive as possible. For example, the Internet may be an appropriate means of posting advisory committee information and providing broader public access.

On Your Own

How much latitude should there be in practicing openness?

Learn More

How much latitude should there be in practicing openness?

As long as agencies achieve the minimum standards of public access and input established by FACA, the Act gives agencies wide latitude. Keep in mind that Section 10(b) of FACA provides for the contemporaneous availability of advisory committee records.
**Federal Advisory Committee Management**

**Principles**

**What are the principles for managing a Federal advisory committee? (continued)**

**Seek Feedback**

Agencies should continually seek feedback from 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.

**FACA Facts**

Why do you think it is important for an agency to have feedback?

**Learn More**

**Why do you think it is important for an agency to have feedback?**

By communicating with the public and advisory committee members on a regular basis, agencies have the opportunity to improve committee processes. As a result, agencies will learn how to make the best use of committee members' expertise and allow for greater public input contemplated by the Act.
Federal Advisory Committee Management

Appointments

How are committee members selected?

Appointing Authority

Unless otherwise provided for by statute or Presidential directive, the agency head has final authority for:

- Developing nomination/selection procedures for committee members.
- Appointing or inviting advisory committee members to serve.
- Determining membership terms.

Though an agency head may delegate the responsibility for appointing members, committee members serve at the pleasure of the agency head or other appointing authority. Each agency head has the sole discretion of deciding how committee members will be selected, unless a statute or Presidential directive provides otherwise. However, selection procedures must be consistent with the Act and the GSA FACA Final Rule.

Mind Meld

Can an agency head select from among nominations submitted by an organization for membership on an advisory committee?

Learn More

Can an agency head select from among nominations submitted by an organization for membership on an advisory committee?

Yes, an agency head can select members from among nominations submitted by an organization. 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.

Mind Meld

Does the appointment of an advisory committee member necessarily result in a lengthy process?

Learn More

Does the appointment of an advisory committee member necessarily result in a lengthy process?

No. Each agency head may specify those policies and procedures, consistent with the Act and the GSA FACA Final Rule, or other specific authorizing statute, governing the appointment of advisory committee members.
Federal Advisory Committee Management

Appointments

How are committee members selected? (continued)

Need for Fairly Balanced Membership

The agency must consider how to obtain a fairly balanced committee membership as required by FACA. The following are just some of the factors that could be considered and addressed in order to achieve a balanced advisory committee membership:

- What is the committee's mission?
- Where do the impacts of the recommendations lie? Are there geographic, ethnic, social, economic, and/or scientific impacts?
- What specific perspectives are required? Those of consumers, technical experts, the public at large, academia, business, or other sectors?
- How strong is the need to obtain divergent viewpoints on the issues?
- What is the relevance of State, local, or tribal governments to the development of the committee's recommendations?

FACA Facts

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.

On Your Own

Do you remember the basic requirements that govern the creation and use of advisory committees? There are five.

Learn More

When establishing or utilizing an advisory committee, the following requirements must be met:

- Determine need is in the public interest
- Fairly balanced membership
- Open meetings
- Advisory function only
- Terminate when no longer needed

For more information, please review Lesson 1: FACA Policies and Procedures.
Federal Advisory Committee Management

Appointments

How are committee members selected? (continued)

Achieving Fairly Balanced Membership

Although FACA requires each Federal advisory committee to have a fairly balanced membership, FACA is silent on the process agencies should use to select and appoint members. Each agency decides on the steps involved in the appointment process, which will impact how long it will take to appoint members. Regardless of the steps involved, it is a best practice to conduct as broad a search as possible for qualified candidates. After candidates have been identified, they should be reviewed for applicability of conflict of interest statutes and other Federal ethics rules.

FACA Facts

Unless otherwise provided by statute, Presidential directive, or other establishment authority, members serve at the pleasure of the appointing authority, and membership terms are at the sole discretion of the appointing authority.

Mind Meld

Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules?

Learn More

Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules?

No. Whether an advisory committee member is subject to conflict of interest statutes and Federal ethics rules is dependent on the member's designation. Based on the role the member will play, most advisory committee members will serve as either:

- A Special Government Employee (SGE) – covered by regulations issued by the U.S. Office of Government Ethics (OGE) and certain conflict of interest statutes.
- A Representative – not covered by these ethics requirements.

A committee member's designation on an advisory committee is determined by the appointing agency.
Mind Meld

Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?

Learn More

Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?

The agency's Designated Agency Ethics Official (DAEO) should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.
**Federal Advisory Committee Management**

**Compensation**

**What is the compensation policy under FACA?**

*Advisory Committee Members and Staff*

It is the responsibility of the agency head to establish uniform compensation guidelines for members and staff of an advisory committee. Although FACA allows an agency to compensate committee members, compensation is not required.

Compensation for committee members and staff cannot exceed the rate for Level IV of the Executive Schedule, unless expressly allowed by another statute. However, other considerations must be taken into account when determining basic pay rates. Consideration must be given to:

- The significance, scope, and technical complexity of the matters with which the advisory committee is concerned.
- The qualifications required for the work involved.

The agency should also take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility.

**Mind Meld**

May members and staff be compensated for their service or duties on an advisory committee?

**Learn More**

*May members and staff be compensated for their service or duties on an advisory committee?*

Yes, members and staff may be compensated. However,

- FACA limits compensation for advisory committee members and staff to the rate for Level IV of the Executive Schedule under 5 U.S.C. 5315, unless other statutes expressly allow higher rates.
- Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.
Mind Meld

Are the guidelines the same for compensating both members and staff?

Learn More

Are the guidelines the same for compensating both members and staff?

No, the guidelines are similar, but not identical.

For **members**, an agency:

- **May pay** members on either an hourly or a daily rate basis.
- **May not** provide additional compensation in any form, such as bonuses or premium pay.

For **staff**, an agency:

- **Must pay** staff on an hourly rate basis only.
- **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.
Federal Advisory Committee Management

Compensation

What is the compensation policy under FACA? (continued)

Experts and Consultants

The agency head also must develop uniform compensation guidelines for experts and consultants. The agency may employ experts and consultants to perform work for an advisory committee.

Their compensation may not exceed the maximum rate of basic pay established for the General Schedule (GS-15, step 10 rate), unless expressly 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).

FACA Facts

Experts and consultants may be employed under 5 U.S.C. 3109 to perform work for an advisory committee.

Mind Meld

May experts and consultants be employed to perform other advisory committee work?

Learn More

May experts and consultants be employed to perform other advisory committee work?

Yes, experts and consultants may be employed to perform other advisory committee work. Experts and consultants may perform other work not part of the duties of advisory committee members or staff. 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.)
Federal Advisory Committee Management

Compensation

What is the compensation policy under FACA? (continued)

Other Compensation Guidelines

Gratuitous services: In the absence of agency-specific limitations, an agency may accept gratuitous services from a committee member, staff person (who is not a Federal employee), or expert or consultant, provided the individual agrees in advance to serve without compensation and does so in writing.

Travel expenses: Committee members and staff performing their committee duties away from their homes or regular places of business may be reimbursed for travel expenses, including per diem in lieu of subsistence, for their intermittent Government service.

Services for advisory committee members with disabilities: A committee member with a disability who qualifies for the services of a personal assistant may receive these services while performing committee duties, provided the member does not otherwise qualify for assistance by reason of being a Federal employee.

FACA Facts

5 U.S.C. 5703 authorizes travel expense reimbursement, including per diem, for persons employed intermittently in the Government service.

Tool Kit

Compare the compensation requirements for advisory committee members, staff, experts, and consultants.

Learn More

Appendix A - Comparison of Compensation Scenarios for Advisory Committee Participants
Federal Advisory Committee Management

Knowledge Check

Knowledge Check

Now that you have reviewed the objectives of this lesson, let's check your understanding. You can gauge your understanding of the material by answering a few questions about FACA principles and committee management. Remember, the lesson will not be finished until you complete the Knowledge Check.

You will be given questions in either a multiple-choice or true/false format. Select an answer by clicking or typing the letter of your choice.

Are you ready? Here we go!

Federal Advisory Committee Management

Knowledge Check

Knowledge Check 1 of 4

Which of the following principles for managing Federal advisory committees is not required by FACA?

A. Focus on the mission.
B. Practice openness.
C. Seek feedback.
D. Prepare strategies for committee recommendations.

The correct answer is D. FACA stipulates that committees must develop recommendations independently. Agencies should focus on the mission, practice openness, and seek feedback, as well as follow plans and procedures and provide adequate support when managing their advisory committees.
Federal Advisory Committee Management

Knowledge Check

Knowledge Check 2 of 4

How are Federal advisory committee members appointed or invited to serve under FACA?

A. They are normally selected by interested organizations and appointed by the DFO.
B. They are normally selected and appointed by the CMO.
C. They are normally selected and appointed as directed by the chairperson.
D. They are normally selected and appointed by the agency head.

The correct answer is D. The agency head has the responsibility and authority for appointing committee members, but the agency head may delegate this responsibility.

Page 18 of 21

Federal Advisory Committee Management

Knowledge Check

Knowledge Check 3 of 4

Compensation for an advisory committee staff person is based on:

A. An hourly rate.
B. A daily rate.
C. The basic salary.
D. A fixed fee.

The correct answer is A. Advisory committee staff are compensated using an hourly rate.

Page 19 of 21
Federal Advisory Committee Management

Knowledge Check

Knowledge Check 4 of 4

The compensation rate for experts may not exceed:

A. That written in the advisory committee charter.
B. Level IV, Executive Schedule under 5 U.S.C. 5315.
C. That of any other expert.

The correct answer is D. The compensation rate for an expert may not exceed that of a GS-15, step 10, unless expressly allowed by another statute.

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Federal Advisory Committee Management

Congratulations!

You have just successfully completed this lesson. To review any part of the lesson again, select the Course Map button and expand the menu to review a sublesson.

Page 21 of 21
Lesson 5 – Meeting and Recordkeeping Procedures

Welcome to Lesson 5: Meeting and Recordkeeping Procedures

Introduction

Estimated time of completion = 15 minutes

FACA sets forth requirements for making advisory committee meetings accessible to the public, and also identifies the situations in which meetings can be closed to the public. The Act enumerates the steps necessary to meet the openness requirements prior to and during a meeting because public input is a key part of the FACA process.

The Act also lists the requirements for documenting meetings, and reporting on the committee's work. The public's ability to gain access to all of these records is in accordance with Section 10(b) of the Act and the Freedom of Information Act (FOIA), and is outlined in this lesson.

Own Your Own

Why do you think Congress included a number of guidelines within FACA?

Learn More

Why do you think Congress included a number of guidelines within FACA?

Through enactment of the Federal Advisory Committee Act, Congress recognized the merits of seeking the advice and assistance of our Nation's citizens.

At the same time, Congress included guidelines to assure that advisory committees:

- Are managed by the executive branch.
- Have a clearly defined purpose.
- Consist of a fairly balanced membership.
- Are not inappropriately influenced by the appointing authority or any special interest.
- Provide advice that is relevant, objective, and open to the public.
- Comply with ethics, recordkeeping, and other related requirements.
- Are subject to an annual review.
- Make information such as activities, membership, and costs available to the public.
- Are terminated when no longer needed or their cost outweighs their benefit.
Meeting and Recordkeeping Procedures

Introduction

Lesson Objectives

Upon completion of Lesson 5, you will be able to:

- Identify requirements governing Federal advisory committee meetings.
- Describe the open meeting requirements of FACA.
- Discuss the requirements governing documentation of Federal advisory committee meetings.
- Identify FACA reporting and recordkeeping requirements, public access to records, and the application of FOIA.

Meeting and Recordkeeping Procedures

Introduction

How does this affect me?

After establishing your advisory committee, you will need to follow specific FACA procedures to organize the meetings that bring everyone together, document what occurs at the meetings, and provide access to committee records.

This lesson will provide you with the in-depth knowledge necessary to comply with FACA's policies and procedures for scheduling, announcing, conducting, and documenting advisory committee meetings. Specific lesson topics include open meeting requirements, guidelines for conducting meetings, documenting the activities that take place, and public access to advisory committee records in accordance with Section 10(b) of the Act and FOIA.

FACA Facts

Any member of the public is permitted to file a written statement with the advisory committee and speak to or otherwise address the advisory committee, if the agency's guidelines so permit.
Meeting and Recordkeeping Procedures

Requirements

What are the open meeting requirements of FACA?

Advisory committee meetings are required to be open and accessible to the public, except in limited, specified circumstances. **It is the responsibility of the agency head, or the chairperson of an independent Presidential advisory committee, to ensure accessibility of the meetings to the public.**

Mind Meld

A DFO has been informed that an advocacy group plans to bring 50 members of its group to an advisory committee meeting. The meeting notice has been published and the location given can only accommodate a maximum of 50 people. Attendance for previous meetings has averaged 30 people. Should the meeting location be changed?

Learn More

Should the meeting location be changed?

No, it is not required that the location be changed. However, the facility does need to accommodate the committee members, staff, agency staff, and a "reasonable" number of members of the public. Based on past attendance, accommodations were made for a reasonable number of members of the public. For those meetings where there is no prior committee attendance history and where a large turnout is suddenly anticipated, the DFO should consider contingency plans to accommodate the overflow (have a larger room available, use of video/audio feed to observe the meeting from a separate room, etc.). Requiring that members of the public register in advance, and advertising the room in the Federal Register notice as being "of limited size, and that seating is on a first come basis..." is also helpful.
**Meeting and Recordkeeping Procedures**

**Requirements**

What are the closed meeting requirements of FACA?

FACA also recognizes that at times it is necessary to close (or partially close) a meeting to public participation. Advisory committee meetings may be closed when appropriate, in accordance with the exemptions for closure contained in the *Government in the Sunshine Act*, 5 U.S.C. 552b(c). Common exemptions cited to legally close Federal advisory committee meetings include:

- Discussions of classified information
- Reviews of proprietary data submitted in support of Federal grant applications
- Deliberations involving considerations of personal privacy

**The Source**

Section 102-3.155 of the GSA FACA Final Rule provides guidance on how advisory committees may be closed to the public.

Get the information straight from the source.

**Learn More**

**Section 102-3.155 of the GSA FACA Final Rule**

To close all or part of an advisory committee meeting, the DFO must:

- **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 justifies 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 Section 102-3.150.

- **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.

- **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.

- **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.
Meeting and Recordkeeping Procedures

Requirements

What are the requirements for scheduling the time and location of advisory committee meetings?

Each advisory committee meeting must be:

- Held at a reasonable time and in a manner or place reasonably accessible to the public.
- 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).
- Held in a location of sufficient size to accommodate committee members, committee or agency staff, and a reasonable number of interested members of the public, regardless of whether the location is a meeting room or other forum.

Tool Kit

What is the applicability of the Act to advisory committee meetings conducted through electronic means?

If a committee meeting is conducted (in whole or part) by teleconference, videoconference, the Internet, or other electronic medium, all FACA open meeting and recordkeeping requirements must be met.

Learn More

What is the applicability of the Act to advisory committee meetings conducted through electronic means?

The definition of "committee meeting" contained in Section 102-3.25 of the GSA FACA Final Rule includes a "gathering" of advisory committee members whether in person or through electronic means. This highlights coverage by the Act of both physical and "virtual" meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

The language contained in Section 102-3.140 of the GSA FACA Final Rule also provides for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This 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 electronic means (such as providing a phone line for a teleconference) to ensure access to committee deliberations.
Meeting and Recordkeeping Procedures

Requirements

Scheduling Meetings

Proper meeting planning, and knowledge of FACA procedures, is essential to the DFO and advisory committee staff tasked with setting up the meetings. It is necessary for the DFO (and advisory committee staff) to determine the following:

- Agenda items
- Format (face-to-face, teleconference, Internet, etc.; open vs. closed)
- Facility to be used (Federal vs. public), if applicable
- Amount of space needed (based on an estimate of agency and public attendance), if applicable
- Cost and payment arrangement
- Public access considerations
- Availability of materials (for members and public)
- How to get everyone there (with their materials), if applicable, or making sure everyone has the information needed to access the meeting (such as via the Internet or teleconference line) and meeting materials

All of these factors will be discussed in greater detail later in this lesson.
Meeting and Recordkeeping Procedures

Requirements

How are advisory committee meetings announced to the public?

At minimum, advisory committee meetings must be announced to the public through a notice published in the Federal Register. The sequence of events leading up to the Notice is as follows:

- DFO approves the agenda (usually developed by the agency with any necessary input from the committee).
- Location and time of the meeting are determined.
- Notice is prepared for publication in the Federal Register.

In addition to the required Federal Register notices, agency and committee Web sites and listservs are examples of tools that can be used to communicate meeting location, date, time, type of meeting, public participation procedures, agenda items, etc.

On Your Own

Who do you think finds possible locations for the meetings, determines a time that will fit the members’ schedules, and prepares the meeting notice that is published in the Federal Register?

Learn More

Who do you think finds possible locations for the meetings, determines a time that will fit the members’ schedules, and prepares the notice which is published in the Federal Register?

The DFO and agency staff generally find the locations that will accommodate everyone attending the meeting (although a contractor could also perform this task), check with the committee members for a consensus on the best possible time to hold the meeting, and prepare the notice that will be submitted to the Federal Register for publication.
**Meeting and Recordkeeping Procedures**

**Requirements**

Are there guidelines for publishing the meeting notice in the *Federal Register*?

It is essential to plan for the communications that are required under FACA's openness provisions. Barring exceptional circumstances, a meeting notice must be published in the *Federal Register* at least **15 calendar days** in advance of an advisory committee meeting, and must include, at minimum:

- The name of the advisory committee (or subcommittee, if applicable)
- The time, date, place, and purpose of the meeting
- A summary of the agenda and/or topics to be discussed
- A statement as to whether all or part of the meeting is open to the public, closed, or partially closed
- The name and telephone number of the DFO or other responsible agency official who may be contacted for additional information concerning the meeting

**FACA Facts**

The meeting notice published in the *Federal Register* must state the reasons why a meeting is closed, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

What if the meeting has to take place earlier than 15 calendar days after publication of the notice?

In exceptional circumstances, the agency or 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*. Failure to allocate enough time for agency approval and publication of the notice would not qualify as an exceptional circumstance.
Meeting and Recordkeeping Procedures

Requirements

Are there any activities of the committee that are not required to be open to the public?

Some activities performed by an advisory committee are excluded from FACA's notice and open meeting requirements. Examples include preparatory and administrative activities. What are these activities?

- **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.

- **Administrative work** – Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee (such as meeting logistical information) or to receive administrative information (such as an ethics briefing) from a Federal officer or agency.
Meeting and Recordkeeping Procedures

Conducting Meetings

I'm ready for the meeting!

Here are some questions you may ask yourself to make sure you are ready to conduct your meeting.

- Has the DFO approved the agenda? The DFO has a pivotal role in assuring that meetings comply with FACA. He/she attends all meetings and ensures efficient operations.
- Have the committee members been notified regarding the location and time of the meeting? Do the committee members have a copy of the agenda and any other materials necessary for participating in the meeting?
- Has a notice been published in the Federal Register at least 15 calendar days in advance of the meeting to inform the public?
- Who else may chair a meeting besides the committee chairperson? The DFO may chair a meeting of an advisory committee when directed by the agency head.
- Who has the authority to adjourn the meeting? The DFO has the authority to adjourn a meeting in progress if he or she determines that it is in the public interest to do so. FACA does not provide guidance regarding reasons for adjourning a meeting. Situations involving danger to persons or property, or other emergencies, likely would give legitimate cause to adjourn. It is up to the DFO to make this decision.

Mind Meld

Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?

Learn More

Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?

Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by Section 102-3.150.

"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.

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.
**Meeting and Recordkeeping Procedures**

**Conducting Meetings**

**How does the public participate in committee meetings?**

Under FACA, the public not only may attend committee meetings, but also can provide input to the committee. Any member of the public is permitted to:

- File a written statement with the advisory committee.
- Speak to or otherwise address the advisory committee, if the agency's guidelines so permit.

It may be necessary to limit the amount of time allocated for verbal statements from the public and/or the number of individuals that may speak. If so, the public should be informed as early as possible regarding the protocol, and be apprised of their option to submit written statements. It is a best practice to post a public comment policy on an advisory committee's Web site.

**FACA Facts**

Public input is of such importance that the responsibility to ensure that the public is given a reasonable opportunity to participate is placed with the agency head.

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**Meeting and Recordkeeping Procedures**

**Conducting Meetings**

**Are subcommittee meetings open to the public?**

Subcommittee meetings are not required to be open to the public if they report to an advisory committee and not directly to a Federal officer or agency. However, the need for public access changes if the subcommittee's recommendations are:

- Made directly to a Federal officer or agency.
- Adopted by the parent advisory committee without further deliberations by the parent advisory committee.

Each agency has the discretion to decide whether or not to open subcommittee meetings to the public.
Meeting and Recordkeeping Procedures

Documenting Meetings

How are the activities of advisory committee meetings documented?

FACA specifies that detailed minutes of each advisory committee meeting must be kept. The agency head, or chairperson of an independent Presidential advisory committee, must ensure that detailed minutes are kept for all meetings (including those that are closed or partially closed to the public).

Although the process for preparing the minutes is not specified in FACA, the DFO is responsible for ensuring they are taken for each meeting. Minutes can be taken by the DFO, a committee staff member, or a contractor providing support to the committee. If transcription services are used for a meeting, minutes are still required to be prepared for that meeting.

Meeting and Recordkeeping Procedures

Documenting Meetings

What must the meeting minutes include?

The meeting minutes must include:

- The time, date, and place of the advisory committee meeting
- 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
- An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matters
- Copies of each report or other documents received, issued, or approved by the advisory committee at the meeting

FACA Facts

The chairperson of each advisory committee must certify the accuracy of the minutes for each meeting. The DFO must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.
Meeting and Recordkeeping Procedures

Reporting

How does the public gain access to these records?

The CMO must ensure that Section 10(b) of the Act is implemented by the agency to provide for appropriate recordkeeping. In accordance with Section 10(b), reports, transcripts, minutes, appendixes, working papers, drafts, studies, agendas, or other documents that were made available to, or prepared for or by, each advisory committee must be available for viewing or copying at a single location (the offices of the advisory committee or the agency to which it reports) until the advisory committee ceases to exist. The DFO usually maintains these records.

The Source

Access to all committee records and documents, along with the ability to attend and provide input at committee meetings, must satisfy the requirements for openness and public input in the work of the committee.

Learn More

GSA FACA Final Rule Section 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 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.

Tool Kit

Learn the FACA Reporting and Recordkeeping Requirements.

Learn More

Appendix B - FACA Reporting and Recordkeeping Requirements
Meeting and Recordkeeping Procedures

Reporting

How does FOIA affect public access to advisory committee records?

Per guidance in the GSA Final Rule, Appendix A to Subpart D, the disclosure exemption available to agencies under Exemption 5 of FOIA for pre-decisional documents and other privileged materials is narrowly limited in the context of FACA to privileged "interagency or intra-agency" documents prepared by an agency and transmitted to an advisory committee. Therefore, FOIA Exemption 5 cannot be used to withhold documents reflecting an advisory committee’s internal deliberations. If there is a reasonable expectation that the advisory committee records sought fall within the exemptions contained in Section 552(b) of FOIA, they generally may be withheld. Agencies first should determine, however, whether or not the 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.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check

Now that you have reviewed the objectives of this lesson, let's check your understanding. You can gauge your understanding of the material by answering a few questions about the meeting and recordkeeping procedures of a Federal advisory committee. Remember, the lesson will not be finished until you complete the Knowledge Checks.

You will be given questions in either a multiple-choice or true/false format. Select an answer by clicking or typing the letter of your choice.

Are you ready? Here we go!
Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 1 of 14

Advisory committee records must be retained:

A. For the duration of the advisory committee.
B. Until records are submitted to the Library of Congress.
C. For 7 years after termination of the advisory committee.
D. For one fiscal year after termination of the advisory committee.

The correct answer is A. Advisory committee records must be retained for the duration of the advisory committee.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 2 of 14

The DFO must ensure that advisory committee minutes are certified:

A. Prior to the next meeting
B. Within 90 calendar days of the meeting
C. Within 5 working days after the end of the meeting
D. Prior to the publication of the next meeting notice in the Federal Register

The correct answer is B. The DFO must ensure that advisory committee minutes are certified within 90 calendar days of the meeting to which they relate.
**Meeting and Recordkeeping Procedures**

**Knowledge Check**

**Knowledge Check 3 of 14**

Committee meetings are approved or called by the:

A. Agency head.
B. CMO.
C. Chairperson.
D. DFO.

The correct answer is D. Committee meetings are approved or called by the DFO.

Page 22 of 34

**Meeting and Recordkeeping Procedures**

**Knowledge Check**

**Knowledge Check 4 of 14**

The notice for an advisory committee meeting should be published in the *Federal Register*:

A. At least 15 working days prior to the meeting.
B. At least 15 calendar days prior to the meeting.
C. No more than 30 calendar days prior to the meeting.
D. No more than 30 working days prior to the meeting.

The correct answer is B. The notice for an advisory committee meeting should be published in the *Federal Register* at least 15 calendar days prior to the meeting.

Page 23 of 34
Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 5 of 14

The chairperson of a Federal advisory committee has requested that a committee meeting be closed to the public due to the highly technical nature of the subjects to be discussed. The meeting should be:

A. Closed to accommodate the wishes of the chairperson.
B. Held open given that the topics are of interest to the public.
C. Closed because the reason for closing the meeting meets specific exemption(s) of the Government in the Sunshine Act.
D. Open because the reason for closing the meeting does not meet any of the specific exemptions of the Government in the Sunshine Act.

The correct answer is D. The meeting should be open. The reason for closing the meeting does not meet any of the specific exemptions of the Government in the Sunshine Act.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 6 of 14

The responsibility for ensuring the opportunity for reasonable public participation to an advisory committee meeting rests with the:

A. CMO
B. DFO
C. Chairperson of the committee
D. Agency head

The correct answer is D. The responsibility for assuring the opportunity for reasonable public participation to an advisory committee rests with the agency head.
**Meeting and Recordkeeping Procedures**

Knowledge Check

Knowledge Check 7 of 14

Which of the following would be a reason for closing an advisory committee meeting to the public?

A. The agenda contains topics on which the committee is strongly divided.
B. The location can only accommodate members of the committee and agency staff.
C. The agenda concerns review of Federal grant applications containing proprietary data.
D. The agenda concerns administrative and preparatory work of a subcommittee.

The correct answer is C. An agenda involving reviews of Federal grant applications containing proprietary data would be a reason for closing an advisory committee meeting to the public. See the Government in the Sunshine Act, 5 U.S.C. 552b(c).

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**Meeting and Recordkeeping Procedures**

Knowledge Check

Knowledge Check 8 of 14

The DFO can chair an advisory committee meeting when:

A. Directed by the agency head.
B. The chairperson is not present.
C. Directed by the CMO.
D. It is in the public interest.

The correct answer is A. The DFO can chair an advisory committee meeting when directed to do so by the agency head.
Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 9 of 14

A subcommittee meeting must be conducted in accordance with all FACA notice and openness requirements if:

A. The subcommittee makes recommendations directly to a Federal officer or agency.
B. It is determined by the DFO that it would be in the public interest.
C. The meeting is covered by specific exemptions of the Government in the Sunshine Act.
D. The subcommittee provides information that will be used by the parent committee in its deliberations.

The correct answer is A. A subcommittee meeting must be conducted in accordance with all FACA notice and openness requirements if it makes recommendations directly to a Federal officer or agency.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 10 of 14

An advisory committee meeting may be adjourned by the DFO:

A. Only for health and safety issues.
B. As directed by the agency head or Secretariat.
C. If the DFO determines that it is in the public interest.
D. Only at the request of the chairperson of the committee.

The correct answer is C. An advisory committee meeting can be adjourned by the DFO if the DFO determines that it is in the public interest to do so.
Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 11 of 14

Who is responsible for certifying the accuracy of the minutes of an advisory committee meeting?

A. DFO
B. Agency head
C. Committee staff support
D. Chairperson of the advisory committee

The correct answer is D. The chairperson of the advisory committee is responsible for certifying the accuracy of the minutes of the advisory committee's meetings.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 12 of 14

The responsibility for ensuring appropriate recordkeeping for an advisory committee rests with the:

A. DFO.
B. CMO.
C. Agency head.
D. Committee chairperson.

The correct answer is B. The CMO is responsible for ensuring that Sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping.
Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 13 of 14

The Government-wide annual comprehensive review of Federal advisory committees is initiated by:

A. GSA.
B. OMB.
C. Congress.
D. Agency head.

The correct answer is A. The annual comprehensive review is initiated by GSA, but DFOs, CMOs, and other advisory committee staff play a critical role in completing the review.

Meeting and Recordkeeping Procedures

Knowledge Check

Knowledge Check 14 of 14

Copies of advisory committee reports must be filed with:

A. Congress.
B. OMB.
C. Library of Congress.
D. GSA.

The correct answer is C. Eight copies of advisory committee reports must be filed with the Library of Congress.

Meeting and Recordkeeping Procedures

Congratulations!

You have just successfully completed this lesson. To review any part of the lesson again, select the Course Map button and expand the menu to review a sublesson.
Lesson 6 – Federal Laws and Regulations Governing Advisory Committees

Welcome to Lesson 6: Federal Laws and Regulations Governing Advisory Committees

Introduction

Estimated time of completion = 15 minutes

Many laws and regulations have a major impact on the management and operation of Federal advisory committees. Compliance with applicable legal requirements is mandatory, and the success of an advisory committee depends on strict adherence to these laws. The objective of this lesson is to explore the important highlights of the major Federal laws and regulations that continue to affect committee management and the individuals that serve on Federal advisory committees.

Lesson Objectives

Upon completion of this lesson, you will be able to:

- Describe the basic purpose of each of the following as it pertains to FACA:
  - Freedom of Information Act (FOIA), 1966
  - Government in the Sunshine Act ("Sunshine Act"), 1976
  - Executive Order 12838, 1993
  - OMB Circular A-135, 1994
  - Unfunded Mandates Reform Act (UMRA), 1995
  - Federal Advisory Committee Act Amendments of 1997
  - GSA Federal Advisory Committee Management – Final Rule, 2001
- Identify the significant impacts Federal laws and regulations have on Federal advisory committee members.
Federal Laws and Regulations Governing Advisory Committees

Introduction

How does this affect me?

Whatever your role within the Federal advisory committee process, you need to understand the legal ramifications of your actions as you participate in the process. While some of the clauses and regulations referred to in this lesson appear to be structural in nature, those governing the need for transparency in Government affect citizens' trust of their Government's decisions.

This lesson will provide you with a broad overview of the major Federal laws and regulations that have a direct impact on Federal advisory committees as a whole, and the individuals serving on them. Recognize that there are many other laws and regulations that impact the operation of Federal advisory committees that are not covered in this lesson, but are covered in other GSA FACA training courses.

Federal Laws

What is the Freedom of Information Act?

Enacted in 1966, the Freedom of Information Act (FOIA) provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. A FOIA request can be made for any agency record.
Federal Laws and Regulations Governing Advisory Committees

Federal Laws

How does FOIA affect advisory committees?

As you learned in Lesson 5, except in very limited circumstances, FOIA does not apply to federal advisory committee records, and the public does not need to submit a FOIA request to access these records. FOIA’s Exemption 5 relates specifically to agency records that could be exempt from public access (inter- or intra-agency communications that are protected by legal privileges). Interagency or intra-agency memoranda or letters that reflect an advisory committee’s internal deliberations do not fall under this exemption, and cannot be withheld under Exemption 5. However, if there is a reasonable expectation that the advisory committee records sought fall within the exemptions contained in Section 552(b) of FOIA, they generally may be withheld.

Federal Laws and Regulations Governing Advisory Committees

Federal Laws

What is the Government in the Sunshine Act ("Sunshine Act")?

By enacting the Government in the Sunshine Act (5 U.S.C. 552b) in 1976, Congress made clear the policy that, to the fullest practicable extent, the public is entitled to information regarding the decision-making processes of the Federal Government.

How does the Government in the Sunshine Act affect advisory committees?

While the Sunshine Act was enacted to ensure open meetings, the Sunshine Act also includes 10 exemptions for closing all or part of a Federal agency’s meetings to the public, which includes Federal advisory committee meetings.

Subsection (c) of the Sunshine Act sets forth the exemptions under which a closed meeting may be held. As you learned in Lesson 5, Section 102-3.155 of the GSA FACA Final Rule describes the procedures that must be followed in order to close all or part of an advisory committee meeting to the public.
Federal Laws and Regulations Governing Advisory Committees

Federal Laws

What impact does Executive Order 12838 have on advisory committees?

Effective February 10, 1993, and entitled, "Termination and Limitation of Federal Advisory Committees," Executive Order (EO) 12838 directed the heads of all executive departments and agencies to reduce by one-third the number of discretionary advisory committees at that time, and required compelling justification for any new discretionary Federal advisory committees.

EO 12838 also required that all new discretionary advisory committees be consistent with identified needs relating to national security, health, safety, or similar national interests. GSA's Committee Management Secretariat continues to provide concurrence in an agency's consultation for the establishment of new discretionary committees consistent with the policy of EO 12838.

Federal Laws and Regulations Governing Advisory Committees

Federal Laws

What was the purpose of OMB Circular A-135?

In response to EO 12838, in 1994 the Office of Management and Budget (OMB) issued OMB Circular A-135, acknowledging the contributions of advisory committees to the Federal decisionmaking process, and calling for the efficient management and timely termination of committees upon completion of their activities. OMB Circular A-135 required executive departments and agencies to develop annual management plans for their non-discretionary committees, and inform OMB on the results of their efforts to maintain discretionary committee levels required by EO 12838.

The policy in OMB Circular A-135 continues to limit the Government-wide number of discretionary advisory committees at the level achieved following the issuance of EO 12838. GSA's Committee Management Secretariat continues to provide concurrence in an agency's consultation for the establishment of new discretionary committees consistent with the policy of OMB Circular A-135.
Federal Laws and Regulations Governing Advisory Committees

FACA Laws

What FACA exclusion was enacted in the Unfunded Mandates Reform Act of 1995?

The Unfunded Mandates Reform Act (UMRA), Public Law 104–4, was passed in 1995 to limit the number of unfunded Federal mandates imposed by the Federal Government on State, local, and tribal Governments. In addition, UMRA was intended to strengthen the partnership and communications between the Federal Government and its State, local, and tribal counterparts. Generally, it permits Federal officials to speak with their State, local, and tribal counterparts without implicating FACA as long as a two-part test, as set forth in Section 204(b) of the Act, is met.

OMB was tasked with providing guidance for implementing Section 204 of UMRA. Section II of these OMB guidelines address the UMRA exemption to FACA and provides guidance to help determine when a meeting qualifies for this exemption from FACA.

The Source

What is the two-part test that must be met for meetings between Federal officials and their State, local, and tribal counterparts to fall under the UMRA exclusion?

Learn More

What is the two-part test that must be met for meetings between Federal officials and their State, local, and tribal counterparts to fall under the UMRA exclusion?

In order for the UMRA exemption from FACA to apply to meetings between Federal and State, local, and tribal officials, the meetings must meet the following two conditions:

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

2. Such meetings are solely for the purpose of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration.
Federal Laws and Regulations Governing Advisory Committees

FACA Laws

Federal Advisory Committee Act Amendments of 1997

In 1997, Congress enacted amendments (Public Law 105–153) to the Federal Advisory Committee Act to clarify public disclosure requirements applicable to the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA). The amendments primarily:

- Exclude committees created by the NAS and the NAPA from FACA requirements, but outline what NAS and NAPA must disclose to the public in order for the Federal Government to use recommendations from their committees.
- Expand the exclusions from the definition of advisory committee to include permanent part-time officers or employees of the Federal Government.

The amendments pertaining to NAS and NAPA are included as Section 15 in FACA.
Federal Laws and Regulations Governing Advisory Committees

FACA Laws

What is the GSA Federal Advisory Committee Management Final Rule?


The regulation is structured as follows:

- Prologue – Summary and Supplementary Information. The prologue provides a summary of the comments received on the proposed regulation, and the background on what was revised (and why) relative to the previous FACA regulation published in 1989.

- Subpart A – General Policies. This subpart describes the purpose of the Federal Advisory Committee Act; provides definitions of committees and FACA players; outlines the general policies governing committee establishment and termination; highlights the requirements of balanced membership on committees, open meetings, and that advisory committee functions are advisory only; and identifies groups not covered by the Act.

- Subpart B – Advisory Committee Establishment, Renewal, Termination. This subpart outlines the authorities for establishing advisory committees; procedures for establishing, renewing, re-establishing, or terminating advisory committees; public notification requirements for these actions; and charter content and filing requirements.
**Federal Laws and Regulations Governing Advisory Committees**

**FACA Laws**

What is the GSA Federal Advisory Committee Management Final Rule? (continued)

- **Subpart C – Management of Advisory Committees.** This subpart delineates the general responsibilities of GSA, the agency/department head, the CMO, and the DFO under FACA.
- **Subpart D – Meeting and Recordkeeping Procedures.** This subpart describes the procedures for announcing open advisory committee meetings as well as how to close meetings; identifies advisory committee activities not required to be open to the public; and outlines advisory committee recordkeeping requirements and public access to advisory committee records.
- **Subpart E – Applicability of FACA to NAS and NAPA.** This subpart addresses the requirements of the 1997 FACA amendments related to NAS and NAPA.

A "Key Points and Principles" appendix is included at the end of each subpart, and each contains some of the most commonly asked questions and corresponding best practice guidance related to the information covered by the subpart. The information contained in the appendixes is best practice only, and not required by the Act or Final Rule.

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**Knowledge Check**

Now that you have reviewed the objectives of this lesson, let us do a Knowledge Check. You can gauge your understanding of the material by answering a few questions about Federal laws and regulations. Let's check your knowledge and see how well you understand the material. Remember, the lesson will not be finished until you complete the Knowledge Check.

You will be given questions in either a multiple-choice or true/false format. Select an answer by clicking or typing the letter of your choice.

Are you ready? Here we go!
Federal Laws and Regulations Governing Advisory Committees

Knowledge Check

Knowledge Check 1 of 4

Which of the following instructed the heads of all executive departments and agencies to reduce the number of advisory committees "not required by statute" by one third?

A. Executive Order 12838, 1993  
B. OMB Circular A-135, October 1994  
C. Federal Advisory Committee Act Amendments of 1997  
D. GSA Federal Advisory Committee Management – Final Rule, 2001

The correct answer is A. Executive Order 12838 directed the heads of all executive departments and agencies to reduce the number of advisory committees "not required by statute" by one third.

Page 14 of 18

Federal Laws and Regulations Governing Advisory Committees

Knowledge Check

Knowledge Check 2 of 4

Which of the following requires executive departments and agencies to establish a committee planning and review process?

A. Executive Order 12838, 1993  
B. OMB Circular A-135, October 1994  
C. Federal Advisory Committee Act Amendments of 1997  
D. GSA Federal Advisory Committee Management – Final Rule, 2001

The correct answer is B. OMB Circular A-135, dated October 5, 1994, requires executive departments and agencies to establish a committee planning and review process.

Page 15 of 18
Federal Laws and Regulations Governing Advisory Committees

Knowledge Check

Knowledge Check 3 of 4

Which of the following directives excludes any committees created by NAS and NAPA from FACA requirements?

A. Executive Order 12838, 1993
B. OMB Circular A-135, October 1994
C. Federal Advisory Committee Act Amendments of 1997
D. GSA Federal Advisory Committee Management – Final Rule, 2001

The correct answer is C. It is the Federal Advisory Committee Act Amendments of 1997 that exclude any committees created by NAS and NAPA from FACA requirements.

Federal Laws and Regulations Governing Advisory Committees

Knowledge Check

Knowledge Check 4 of 4

Identify the statement that best fits the following. The FACA Final Rule of 2001:

A. Provides the regulatory requirements for implementing the Federal Advisory Committee Act.
B. Describes the procedures for establishing, renewing, managing, and terminating Federal advisory committees.
D. All of the above.

The correct answer is D. All of the Above. The FACA Final Rule of 2001 provides the regulatory requirements for implementing the Federal Advisory Committee Act; describes the procedures for establishing, renewing, managing, and terminating Federal advisory committees; and consists of a preamble, subparts A–E, and best practice appendixes.
Federal Laws and Regulations Governing Advisory Committees

Congratulations!

You have just successfully completed Lesson 6, Federal Laws and Regulations Governing Advisory Committees. To review any part of the lesson again, select a sublesson for review from the Course Map. A complete review of the course is available as a PDF file.

Now it is time to take a mandatory test to see if you have acquired a good, general understanding of many of the factors involved in the creation, operation, management, and termination of Federal advisory committees. In order to receive credit for this course, and be eligible to enroll in the Committee Management Secretariat's 2-day FACA Management Training Course, you must score 75% or better on the mandatory test consisting of 12 randomly selected questions.
Appendix A

Comparison of Compensation Scenarios for Advisory Committee Participants
<table>
<thead>
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<th></th>
<th>Committee Members</th>
<th>Staff</th>
<th>Experts</th>
<th>Consultants</th>
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<td>Not to exceed rate for Level IV, Executive Schedule under 5 U.S.C. 5315 (unless higher rate expressly allowed by another statute)</td>
<td>May not exceed GS-15, step 10 rate, excluding locality pay or any other supplement</td>
<td>May not exceed GS-15, step 10 rate, excluding locality pay or any other supplement</td>
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<td>In excess of GS-15 or similar agency compensation system</td>
<td>With agency head authorization</td>
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<td>Hourly or daily rate</td>
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<td>Aggregate compensation cap per calendar year</td>
<td>N/A</td>
<td>Not to exceed the rate for Executive Schedule Level IV, with appropriate proration for partial calendar year</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Travel/per diem</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
Appendix B

*FACA Reporting and Recordkeeping Requirements*
Learn the FACA reporting and recordkeeping requirements.

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<td><strong>Report</strong></td>
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<td>Presidential Advisory Committee Follow-Up Report</td>
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<td>Annual Report of Closed or Partially Closed Meetings</td>
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<td>Advisory Committee Report, including closed or partially closed meetings</td>
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Appendix C

Glossary of Terms
Administrative work
Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee (such as meeting logistical information) or to receive administrative information (such as an ethics briefing) from a Federal officer or agency.

Administrator
Administrator of the General Services Administration.

Advisory committee
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 authority
Under Title 5 of the United States Code, or under other agency-authorizing statutes, an agency has the authority to establish advisory committees.

Agency head
The head of each agency or department that acts as the sponsor for establishing or utilizing advisory committees in that agency/department. The Act and GSA Final Rule denote the responsibilities of the agency head.

Annual Comprehensive Review (ACR)
Annual Government-wide review of Federal advisory committees (such as activities, membership, and costs) that is mandated by Section 7 of the Act. It is initiated by GSA and involves the agency staff responsible for entering or reviewing committee data in the FACA database.

Authorized by statute
Congress authorizes the President or an agency to create an advisory committee instead of making it a requirement.

Best practices
A set of guidelines or ideas that represent an efficient or prudent course of action, but are not required by law.

Charter
A legal document that marks the formal establishment of a Federal advisory committee. A charter is intended to provide a description of an advisory committee's mission, goals, and objectives, and provides a basis for evaluating an advisory committee's progress and effectiveness. The Act and GSA Final Rule outline requirements for the specific content and charter filing procedures.
Closed meetings
Advisory committee meetings that are legally closed to the public. Advisory committee meetings may be closed when appropriate, in accordance with the exemptions for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c).

Committee Management Officer (CMO)
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
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.

Committee meeting
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
An individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff
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.

Decisionmaker
This person makes agency decisions about implementation of recommendations from a committee sponsored by the agency.

Designated Federal Officer (DFO)
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
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.
Establish

The action an agency takes to initiate a Federal advisory committee. An advisory committee that is not required by statute or Presidential directive may be established only when it is essential to the conduct of agency business and when the advice to be obtained is not already available through another advisory committee or source within the Federal Government.

Executive branch

One of the three branches of Government, it is the branch charged with the execution and enforcement of laws and policies through agencies and departments, and the administration of public affairs. The President serves as its head.

Executive Order (EO) 12838

Entitled "Termination and Limitation of Federal Advisory Committees," this EO directed the heads of all executive departments and agencies to reduce by one-third the number of discretionary advisory committees at that time, and required compelling justification for any new discretionary Federal advisory committees.

Expert

A person who has a comprehensive and authoritative knowledge or skill in a particular area.

FACA


Fairly balanced membership

A requirement by the Act and GSA Final Rule for all Federal advisory committees to be fairly balanced in their membership in terms of the points of view represented and the functions to be performed by the advisory committee.

Federal Register

A daily publication of the U.S. Federal Government that issues notices, proposed and final administrative regulations of Federal agencies, and Presidential documents.

Freedom of Information Act (FOIA)

Provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

Government in the Sunshine Act

The Act that allows agencies/departments to legally close Federal advisory committee meetings if certain conditions are met.

GSA Final Rule

Promulgated in 2001, the Final Rule provides Government-wide regulations regarding implementation of the Federal Advisory Committee Act by executive departments and agencies.
Independent Presidential advisory committee
Any Presidential advisory committee not assigned by Congress in law, or by the President or the President's delegate, to an agency for administrative and other support.

Intergovernmental committee
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. 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.

Intragovernmental committee
Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government.

Life cycle of advisory committee
The lifespan of a Federal advisory committee, which includes committee establishment, operation, and termination.

Meeting minutes
FACA specifies that detailed minutes of each advisory committee meeting must be kept (including those meetings that are closed or partially closed to the public), and stipulates the minimum content. The accuracy of all minutes must be certified by the chairman of the advisory committee. If transcription services are used for a meeting, minutes are still required to be prepared for that meeting.

Non-discretionary advisory committee
Any advisory committee required either by statute or by Presidential directive. A non-discretionary advisory committee's establishment or termination is beyond the legal discretion of an agency head.

Office of Government Ethics (OGE)
The agency that provides overall direction, oversight, and accountability of executive branch policies designed to prevent and resolve conflicts of interest.

OMB Circular A-135
The Office of Management and Budget (OMB) issued OMB Circular A-135 in response to EO 12838, acknowledging the contributions of advisory committees to the Federal decisionmaking process, and calling for the efficient management and timely termination of committees upon completion of their activities. This circular continues to support the Government-wide limit on discretionary advisory committees at the level achieved following the issuance of EO 12838.
Open meetings
Advisory committee meetings that are open to the public. Advisory committee meetings are required to be open and accessible to the public, except in limited, specified circumstances.

Operational committee
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 the GSA Final Rule.

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.

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

Presidential authority
The President issues an Executive Order or other Presidential directive to create an advisory committee.

Required by statute
Congress requires the establishment of an advisory committee or specifically directs the President or an agency to establish it.

Secretariat
See Committee Management Secretariat.

Subcommittee
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.

Terminate
The action an agency takes when a Federal advisory committee is no longer needed. Reasons for terminating a Federal advisory committee include: the stated objectives of the committee have been accomplished; 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; or the agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government.
Unfunded Mandates Reform Act (UMRA)
Passed in 1995 to limit the number of unfunded Federal mandates imposed by the Federal Government on State, local, and tribal governments, UMRA was intended to strengthen the partnership and communications between the Federal Government and its State, local, and tribal counterparts. Generally, it permits Federal officials to speak with their State, local, and tribal counterparts without implicating FACA as long as a two-part test, as set forth in Section 204(b) of the Act, is met.

Utilized
For the purposes of the Act, "utilized" 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.