

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

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

E. Executive Order 12866

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

F. Regulatory Flexibility Act

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

G. Paperwork Reduction Act

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

H. Small Business Regulatory Enforcement Fairness Act

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

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

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,
Administrator of General Services.

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

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

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

Subpart 101-6.10—Federal Advisory Committee Management

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

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

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

CHAPTER 102—[AMENDED]

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

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

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

Sec.

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

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

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

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

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

Subpart C—How Are Advisory Committees Managed?

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

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This Federal Advisory Committee Management part meets the general and

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

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

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

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

§ 102-3.25 What definitions apply to this part?

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

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

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the requirements of the Act and this part.

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

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

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

APPENDIX A TO SUBPART A

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

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
<p>III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.</p>	102–3.40(e)	<p>1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act?</p> <p>2. Does the concept of an "individual" apply only to "natural persons?"</p>	<p>A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations "as a group." (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting "as a group" under the Act. (ii) In this respect, "individual" is not limited to "natural persons." Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person's organization without violating the Act, if those organizations themselves are not "managed or controlled" by the agency.</p>
<p>IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.</p>	102–3.40(g)	<p>1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?</p>	<p>A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).</p>
<p>V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform "operational" duties by the Congress or by Presidential directive.</p>	102–3.30(e), 102–3.40(k)	<p>1. Are "operational committees" subject to the Act, even if they may engage in some advisory activities?</p>	<p>A. No, so long as the operational functions performed by the committee constitute the "primary" mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.</p>

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily "operational" functions are not subject to the Act.	102-3.40(k)	<ol style="list-style-type: none"> 1. What characteristics are common to "operational committees?" 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation's parks. Part of the committee's role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA? 	<ol style="list-style-type: none"> A. In answer to question 1, non-advisory, or "operational" committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program. B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily "operational" and not covered by FACA. C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reestablished in accordance with § 102-3.60.

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

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

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

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

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

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

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

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

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

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

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

§ 102-3.70 What are the charter filing requirements?

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

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

(1) The agency head;

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

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

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

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

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

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

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

- (1) The advisory committee's official designation;
- (2) The objectives and the scope of the advisory committee's activity;
- (3) The period of time necessary to carry out the advisory committee's purpose(s);
- (4) The agency or Federal officer to whom the advisory committee reports;
- (5) The agency responsible for providing the necessary support to the advisory committee;
- (6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

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

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

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

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

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

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

§ 102-3.80 How are minor charter amendments accomplished?

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

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

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

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

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

§ 102-3.85 How are major charter amendments accomplished?

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

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

- (a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and
- (b) File the amended charter as specified in § 102-3.70.

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

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

APPENDIX A TO SUBPART B

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

Subpart C—How Are Advisory Committees Managed?

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

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

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

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

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

support, and access to key decisionmakers.

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

(c) Follow plans and procedures.

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

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

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

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

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

(b) The Secretariat carries out its responsibilities by:

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

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

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

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

- (a) Comply with the Act and this Federal Advisory Committee Management part;
- (b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;
- (c) Designate a Committee Management Officer (CMO);
- (d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;
- (f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;
- (g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

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

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

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

The chairperson of an independent Presidential advisory committee must:

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

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

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

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

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

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

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

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

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

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

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

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

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

FACA does not assign any specific responsibilities to members of advisory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

members of the advisory committee involved.

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

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

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

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

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

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

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

APPENDIX A TO SUBPART C

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

APPENDIX A TO SUBPART C—Continued

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

APPENDIX A TO SUBPART C—Continued

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

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

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

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

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

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

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

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

reasonable number of interested members of the public;

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

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

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

§ 102–3.145 What policies apply to subcommittee meetings?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 102-3.165 How are advisory committee meetings documented?

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

(b) The minutes must include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A TO SUBPART D

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

APPENDIX A TO SUBPART D—Continued

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

APPENDIX A TO SUBPART D—Continued

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX A TO SUBPART E

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

Memorandum dated August 18, 2005,
from Marilyn L. Glynn, General Counsel,
to Designated Agency Ethics Officials
Regarding Federal Advisory Committee Appointments

There has been much attention focused recently on Federal advisory committees. As you may be aware, the Government Accountability Office (GAO) issued a report (GAO-04-328) last year raising concerns about how some agencies were appointing members to serve on their advisory committees. In response to that GAO report, the Office of Government Ethics (OGE) issued a DAEOgram that identified several steps that agencies should take to address certain ethics-related concerns about committee appointments (see OGE July DAEOgram, DO-04-022 dated July 19, 2004 [OGE Informal Advisory Memorandum 04 x 9]). Moreover, we informed ethics officials that OGE would focus increased attention on committee appointment matters in upcoming program reviews.¹

Since issuing the July DAEOgram, some of the agencies we reviewed have changed the designations of members serving on their advisory committees, from non-employee "representatives" to special Government employees (SGEs). The purpose of this memorandum is to further assist agencies in distinguishing between SGEs and representatives. In addition, this memorandum highlights some aspects of the committee formation and appointment process that may help ethics officials better understand that process.

BACKGROUND

In 1972, Congress passed the Federal Advisory Committee Act (FACA) to provide an orderly procedure for Federal agencies to

¹ In October 2004, OGE amended its ethics program review guidelines pertaining to advisory committees. The new review guidelines are located on OGE's website and can be accessed at http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/prd_mats/prdrevguide.pdf.

use in seeking the advice, assistance, and input of persons outside the Government.² FACA governs how advisory committees are established, operated, and terminated. There are now over 960 Federal advisory committees, with about 62,000 members, established in the executive branch. These committees play a role in shaping important public policy on difficult issues facing Government decisionmakers. The General Services Administration (GSA) provides a procedural framework for agencies to follow in using advisory committees.³ GSA's FACA rule requires agency heads to ensure that the interests and affiliations of members serving on these committees are in conformance with applicable Federal ethics rules.⁴

APPLYING GOVERNMENT ETHICS RULES TO COMMITTEE MEMBERS

Individuals appointed to serve as members of advisory committees come from both the public and private sectors. These individuals provide the Government with needed expert advice and diverse views. Some members are regular Government employees.⁵ Other members may be appointed to serve as special Government employees, i.e., "an officer or employee . . . who is retained, designated, appointed, or employed" by the Government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. See 18 U.S.C. § 202(a); DAEOgram DO-00-003 [OGE Informal Advisory Memorandum 00 x 1], entitled "Summary of Ethical Requirements Applicable to Special Government Employees."

² See 5 U.S.C. app. II, § 2.

³ See 41 C.F.R. part 102-3.

⁴ See 41 C.F.R. § 102-3.105(h).

⁵ Employees may sometimes serve in an "ex officio" capacity on some advisory committees. These members are selected and appointed to serve on an advisory committee because the individual holds a particular Government position. These members remain subject to the ethics rules arising from that member's position with the Government. See OGE Informal Advisory Letter 93 x 14 ("Individuals . . . who already hold a Federal office, continue to be subject to ethics laws and regulations applicable to them because of that Federal office held prior to their appointment.")

However, many advisory committee members will not have any Government employee status. Most of these members will provide services in a non-employee "representative" status. These representative members are specifically appointed to a committee to provide the committee with the points of views of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.) that have interests in the subject matter under a committee's charge. Unlike employee members, representative members are not being appointed on committees to exercise their own individual best judgment on behalf of the Government.⁶ Instead, representatives serve as the voice of groups or entities with a financial or other stake in a particular matter before an advisory committee.⁷

Government employees and representatives on advisory committees are not treated the same for purposes of applying Federal ethics rules.⁸ Regular Government employee and SGE members are expected to provide their own independent judgment in committee deliberations. Therefore, they are expected to discuss and deliberate in a manner that is free from conflicts of interest. Consequently, they must comply with applicable conflict of interest laws, standards of conduct rules, and

⁶ See OGE 93 x 14 at p. 49 (non-employee representatives expected to "represent a particular bias," and not to use independent judgment) & 1999 OLC LEXIS 11, (September 15, 1999), memorandum entitled "Applicability of 18 U.S.C. § 219 to Representative Members of Federal Advisory Committees" (representative members are generally those members 'chosen for committee membership only to present the views of a private interest.')

⁷ While not the primary focus of this memorandum, there is another non-employee status that may cover some committee members. In certain circumstances, members may serve as independent contractors. In general, independent contractors are not Government employees because they lack the requisite supervision or operational control necessary to create an employee-employer relationship. See OGE Informal Advisory Letter 82 x 21, OGE 00 x 1, and OGE Informal Advisory Memorandum 82 x 22 (alluding to the creation of a committee fully staffed by independent contractors).

⁸ See OGE 93 x 14, at p. 50, ("Representatives are not covered by [conflict of interest laws]; otherwise the purpose of their services would be thwarted.")

financial disclosure requirements (although, given their limited service as employees, SGEs are subject to Federal ethics rules in a somewhat less rigorous manner).⁹ In contrast, Federal ethics rules do not apply to those members serving as representatives.¹⁰

**DESIGNATING THE STATUS OF COMMITTEE MEMBERS --
SOME BASIC CRITERIA**

Because the extent to which committee members are subject to Federal ethics rules will depend on their status as employees or non-employees, agency officials must be familiar with some of the basic criteria that the executive branch has long used in making this distinction. In past guidance, OGE has identified several factors that agencies should look to in designating the status of advisory committee members. See, for example, OGE 82 x 22. These factors were taken verbatim from a Presidential memorandum issued shortly after the enactment of legislation creating the SGE category.

⁹ See 7 Op. O.L.C. 123, 125 (1983) ("conflict of interest statutes impose fewer and less rigorous restrictions on certain short-term or intermittent employees called 'special government employees'"). OGE 00 x 1 provides a comprehensive discussion of how Federal ethics rules apply to committee members who serve as SGEs.

¹⁰ See OGE 93 x 14, at p. 50, ("In the absence of applicable statutes or regulations governing their conduct, representative members should comport themselves with integrity so as not to trade upon their positions . . . for their own personal benefit." Note, however, that some agencies do address potential conflicts of interest of their representative members to some extent. For example, the Bureau of Land Management in the Department of the Interior (DOI) "prohibits its advisory committee members from participating in any matter in which they, a spouse, or dependent child have a direct financial interest." DOI also "requires the members to disclose any direct or indirect interest in leases, licenses, permits, contracts, or claims, and related litigation that involve lands or resources administered by the bureau." See GAO Report (cited earlier on page 1) at p. 26. These ethics-related rules are oftentimes a result of specific requirements set forth in laws and rules outside of OGE's purview.

Whether or not these factors (some of which were most recently clarified in OGE DAEogram DO-04-022 [OGE 04 x 9]) will need to be used to determine a committee member's status will depend on whether the member's status has been clearly stated in a committee's enabling authority. While Congress may sometimes specify in legislation the status of members serving on an advisory committee, it may not always do so or do so clearly. Where a committee's enabling authority does not contain any language sufficiently identifying a member's status or that language is itself ambiguous, agency officials must determine the status of members serving on a committee.

In general, the determination of a member's status should be made by the responsible agency official at the time of the individual member's retention, designation or appointment.¹¹ The agency should make the status of an individual known at the time of the member's selection so that the individual may know his or her obligations under the criminal conflict of interest laws and other ethics rules. In making designations, agencies should never designate committee members as representatives to avoid subjecting them to Federal ethics rules.

Among the factors to be considered in designating an advisory committee member's status are the following:

1. *Receipt of Compensation*

One factor that may be conclusive of employee status is compensation (other than travel or per diem expenses) for providing services to an advisory committee.¹² However, the fact

¹¹ See 41 C.F.R. part 102-3, Subpart C (Appendix A) which highlights the importance of determining a member's status for purposes of applying Federal ethics rules. In addition, GSA recently amended its reporting requirements so that agencies must now report the individual status of each member serving on an advisory committee in GSA's FACA database. To access the current FACA database, the web link is <http://www.fido.gov/facadatabase>.

¹² See OGE 82 x 22, at p. 330 ("A person who receives compensation from the Government for his services . . . is its employee and not a representative of an outside group."); OGE Informal Advisory Letter 93 x 30 at 141 ("we would ordinarily view Federal compensation as automatically creating a status of Government employment").

that a member is not paid any compensation for committee work would not necessarily mean a member is serving in a representative status. Many advisory committee members, who serve as SGEs, are not compensated for their committee service.¹³ Often, whether an SGE is compensated will depend on the policy of the agency that is sponsoring a particular committee.¹⁴

Nonetheless, there are some situations where representatives have been compensated for committee services. For example, Congress may specifically provide "clear statutory language" in a committee's enabling statute that allows an agency to compensate representative members for their services.¹⁵ The Negotiated Rulemaking Act of 1990, for example, provides that members serving on a negotiated rulemaking advisory committee shall be responsible for their own expenses for participating on a committee. The law, however, also includes a provision that specifically allows an agency to pay for such expenses and a "reasonable rate of compensation" if the "member certifies a lack of adequate financial resources to participate in the committee" and "such member's participation in the committee is necessary to assure adequate representation of the member's interest."¹⁶

2. Using Outside Recommendations

Another important factor for an agency to consider in designating a committee member's status concerns the agency's use of outside recommendations in their member appointment

¹³ Under 18 U.S.C. § 202(a), individuals can be deemed SGEs even if they serve without compensation.

¹⁴ See GAO Report (cited earlier on page 1) at p. 34. Moreover, GSA's FACA rule allows an agency to accept gratuitous services from advisory committee members under certain circumstances. See 41 C.F.R. § 102-3.130 which discusses the policies that apply to the compensation or reimbursement of advisory committee members.

¹⁵ See OGE 93 x 30, at p. 141.

¹⁶ See 5 U.S.C. § 568(c). The law also provides that "a member's receipt of funds under [§ 568] . . . shall not conclusively determine for purposes of sections 202 through 209 of title 18 whether that member is an employee of the United States Government." See 5 U.S.C. § 568(d).

process. It is not uncommon for an agency to obtain recommendations from outside persons or entities that have a stake or interest in committee matters. These outside recommendations can serve several important purposes. For example, they can aid an agency in finding qualified candidates with the appropriate levels of subject matter expertise and experience. They can also help to expand the candidate pool for positions on a committee.

In its May 2004 report, GAO expressed a concern that some agencies may overemphasize this factor in designating a committee member's status.¹⁷ As stated in our previous guidance in OGE 82 x 22, the use of outside recommendations "tends to support" a conclusion that a member's service is in a representative capacity.¹⁸ In subsequent guidance, we have stated that an agency's use of outside recommendations is only one of several factors that can be useful in properly designating a member's status on a committee.¹⁹ In general, the weight that outside recommendations should be given as a factor will vary depending upon how the recommendations were obtained, their overall use in the appointment process, and how much of a role outside entities are given in selecting members.

Agencies generally have different practices and methods for obtaining recommendations for positions on advisory committees. Some agencies publish notices in the *Federal Register*. Other agencies issue press releases allowing interested groups and individuals an opportunity to recommend prospective candidates for committee service. In some cases, Congress may require an agency to obtain recommendations from outside groups for prospective committee members.²⁰

¹⁷ See GAO Report at pp. 24-25.

¹⁸ See OGE 82 x 22 at p. 331.

¹⁹ See OGE 04 x 9.

²⁰ See 21 U.S.C. § 360c(b)(2), ("Scientific, trade, and consumer organizations shall be afforded an opportunity to nominate individuals for appointment to the panels). See also, 21 C.F.R. § 14.82 (publication of "one or more notices in the *Federal Register* each year requesting nominations for voting members of all existing standing advisory committees.") The Department of Agriculture's Forest Service routinely seeks recommendations for the names of prospective nominees for its Resource Advisory Committees (RACs) established under

The manner in which an agency solicits outside entities for recommendations for committee member positions should be considered in determining whether an individual is serving in a representative status on an agency's committee. A representative status would be more likely in situations where outside entities have a greater role in the selection and nomination process. For example, a representative status would be more likely if an agency: compiled a list of potential candidates (based on recommendations it received from outside entities), subsequently distributed that list to outside entities, and then asked them to select a person the agency would then appoint to represent their interests or views. A selection process in which outside entities are to a large extent responsible for recommending and selecting the members that would represent its views would strongly support a non-employee representative designation.

3. *Acting as a Spokesperson*

Another important factor for agency officials to consider in determining the status of an advisory committee member is the function a member is expected to play on the committee. If a committee member is expected to function as a spokesperson for nongovernmental groups or stakeholders, the committee member would be serving as a representative member. In this role, the member would be expected to represent and speak on behalf of the interests, views, or biases of a recognizable group of persons or class of stakeholders.

There are different indicia that an agency official may look to in determining whether a committee member is expected to function as a spokesperson for the interests of outside groups or stakeholders. For example, a spokesperson relationship would be present or more likely to be present in situations where a committee member:

- (1) is expected to have the authority to bind certain outside groups or stakeholders to particular positions on issues that will likely be presented to a committee for deliberation or discussion (although this authority may be rare because of the difficulty a member would have in reaching consensus or agreement

Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Public Law 106-393).

among the various interested stakeholders or groups on issues before a committee, its presence is strongly indicative that the member is serving in a representative capacity);

(2) is being selected to serve on a committee based upon that member's past affiliations or dealings with certain interested outside groups or stakeholders and the member's substantial knowledge of the views or positions of these entities (e.g., a member may have in the past served as a spokesperson for the same outside groups or stakeholder on non-committee matters);

(3) is expected to engage in regular consultations with outside groups or stakeholders regarding the substance of committee discussions and deliberations during the member's term of service (e.g., the member may be required by the committee's enabling authority to consult with outside groups or stakeholders on pending matters coming before the committee); or

(4) is expected to be given access to privileged or confidential information about and from outside groups and stakeholders that may not be necessarily shared with other members of the committee but which will assist a member in representing these entities.

Of course, whether a member is expected to function as a spokesperson for an advisory committee will depend upon the facts and circumstances in each case. A committee's mandate or purpose, as determined by the law, Presidential directive or other authority creating the committee, will have a large impact in determining what role a member is expected to have on a committee. Agency officials may also want to look at a committee's selection and appointment process as well as its current policies, practices, and committee rules regarding representative members in determining whether a member will be serving as a spokesperson on a committee.

USE OF THE TERM "REPRESENT" AND ITS COGNATE FORMS IN
AUTHORIZING LEGISLATION OR OTHER ENABLING DOCUMENTS

A common misstep, in determining the status of a member serving on an advisory committee, is for an agency official to conclude that a member is serving in a "representative" status solely because a committee's authorizing legislation or other enabling document uses the word "represent" (or any of its cognate forms) in describing the committee's membership. In the GAO report cited earlier, GAO recognized that some of this confusion may have derived from language in OGE 82 x 22. GAO concluded that the last section in that memorandum implies that, when the term "representative" is used in an advisory committee's authorizing legislation or other enabling documents, members of that committee should be classified as representatives.²¹

In subsequent guidance, OGE has said that using the term "represent" in an advisory committee's authorizing legislation or in its enabling documents does not necessarily mean that the members of that committee are to be appointed as representative members. Oftentimes, the term "represent" may be used in a more generic sense (e.g., to describe the kinds of expertise, knowledge, or employment background that should be included in a committee's membership) rather than for the express purpose of classifying a member's role on the committee.

For example, a committee's enabling authority may require that its membership include a representative with expertise in natural sciences to be selected from a college or university. The use of the word "representative" in this case would not, by itself, require an agency to appoint a representative member to the committee. Absent more compelling language about the member's role on the committee, the use of representative in this case could merely convey that this particular committee member should have a background in the natural sciences and that the member should come from academia.

However, if the same enabling authority contained additional language, different conclusions about status might be made. If the enabling authority also said that the member shall be nominated by outside stakeholders and that the member is to provide the views and perspectives of those stakeholders, the member should be appropriately appointed as a representative member. Conversely, if the enabling authority stated instead

²¹ See GAO Report (cited earlier on page 1) at p. 24.

that the member should serve in the member's individual capacity and exercise independent judgment, the member should not be considered to be serving in a representative status on the committee.

Accordingly, in reviewing a statute, Presidential directive or other documentation establishing an advisory committee, the use of the term "represent" or any of its cognates should not end an agency's inquiry on whether a member will be serving as a representative or an SGE. Rather, agency officials should carefully scrutinize the language in a committee's enabling authority and in light of all relevant factors determine whether committee members are actually intended to serve as a representative of outside interests groups or as an SGE.

USING CHARTER INFORMATION IN STATUS DESIGNATIONS

As discussed in OGE 82 x 22, a committee's enabling law is an essential document in determining the status of persons serving on an advisory committee. Among the other documents that may be helpful in identifying a member's status for purposes of applying conflicts rules is a committee's FACA charter. All committees must file charters before meeting or taking any action as a committee whether a committee is discretionary (i.e., created by agencies or authorized by Congress or the President but not directed to be established) or nondiscretionary (i.e., required by statute or Presidential authority to be established).²² Agencies must file these charters with GSA, the respective agency heads, appropriate committees in Congress, and the Library of Congress.²³

In general, FACA requires advisory committee charters to contain a description of a committee's mission, goals, and objectives and other basic information about the advisory committee.²⁴ Charter information may be useful to ethics officials in understanding how a committee will operate and the role committee members will have on a committee, especially where details are otherwise lacking in the committee's enabling

²² See 5 U.S.C. app. II, § 9(c).

²³ See 41 C.F.R. § 102-3.70.

²⁴ See 5 U.S.C. app. II § 9. In all, FACA identifies ten types of information required in committee charters.

authority. For example, a charter may provide information on subcommittee establishment and whether members will be compensated by the agency. The charter may also alert ethics officials to any additional conduct rules that may apply to their committee members.²⁵ These rules may, for example, emanate from authority conferred to an agency under its organic statute. Ethics officials should cover these rules in ethics training provided for committee members.

ETHICS ISSUES REGARDING SUBCOMMITTEES

In general, when permitted by the agency or other enabling authority, an advisory committee can establish subcommittees to perform specified tasks for the "parent" committee.²⁶ These subcommittees perform time-consuming tasks that would be difficult for the parent committee to do during regular meetings. For example, a subcommittee may be established to screen complex proposals for a parent committee's later consideration. In general, subcommittees enable the advisory committee to function more effectively and efficiently.

Members of the parent committee may be chosen to serve on one of its subcommittees, or other individuals who are not already members of the parent committee may be appointed to serve as subcommittee members. These other individuals may be appointed to provide the committee with needed subject matter and technical expertise.

Subcommittee members, like parent committee members, may be subject to Government ethics rules depending upon their role and the type of advice they are providing to the subcommittee. It is important that subcommittee members are properly designated for ethics purposes, using the same criteria discussed above.

²⁵ For example, the National Wild Horse and Burro Advisory Board Charter, filed on July 21, 2004, elaborates on the duties of the board, ethics responsibilities of members, and the creation of subcommittees.

²⁶ See 41 C.F.R. § 102-3.35.

TERMINATING, REVIEWING, AND REESTABLISHING ADVISORY COMMITTEES

Subject to certain exceptions, an advisory committee will normally terminate two years from the date it was first established.²⁷ However, some committees continue to exist beyond the normal two-year cutoff period, if the President or an agency head renews or reestablishes the committee or if the committee's enabling authority does not provide any termination provisions. A new charter must be filed for a renewed or reestablished committee; for ongoing committees, charters must be filed every two years.²⁸ Agencies should consider using the periodic filing of these charters by a committee as an opportunity to ensure that status designations of members are being properly made by agency officials.

However, Congress may exempt committees, which do not have termination provisions, from these chartering requirements. These "standing committees" may pose some special challenges. For instance, an agency may have only designated the status of the committee's members once, when the committee was first established by Congress. If the enabling law has since been amended substantially, these initial status designations may no longer be appropriate for certain committee members.

Accordingly, the status designations of members serving on all committees, including those that may be exempt from having to renew or reestablish their committees or from the general chartering requirements, should be periodically reviewed by agency officials. Any such review should ensure that these designation decisions have appropriately considered changes that may have occurred in a committee's enabling authority.

CONCLUSION

We appreciate the efforts of ethics officials in addressing advisory committee ethics issues in the past year. Your continued involvement and support of your agency's committee appointment process will help ensure that committee members

²⁷ See 41 C.F.R. § 102-3.55.

²⁸ Certain subcommittees that report directly to a Federal officer or agency are also required to file charters. See 41 C.F.R. § 102-3.70(c).

comply with applicable ethics rules. This guidance is meant to further assist agency ethics officials in supporting those agency officials who are responsible for appointing members to serve on advisory committees. It is important that agencies have appropriate policies and procedures in place for designating the status of advisory committee members and for addressing ethics concerns arising from committee appointments. We encourage ethics officials to share this memorandum with committee management officials that have appointment responsibilities, and let them know of the continued availability of ethics officials to assist with the designation process.

Press Policy

President's Advisory Council on Financial Literacy

Members of the President's Advisory Council on Financial Literacy should direct media requests for comment or interview regarding Council matters to Jennifer Zuccarelli, the Director of the Treasury Department's Office of Public Affairs, at (202) 622-8657.

President Bush Announces President's Advisory Council on Financial Literacy

Roosevelt Room

THE PRESIDENT: I appreciate members of my Cabinet joining me today with some of our citizens who care about the future of our country and are willing to do something about it. Earlier today I signed an executive order establishing the President's Advisory Council on Financial Literacy. I have asked people from the business world, the faith world, the non-profit world, to join this council in order to come up with recommendations as to how to better educate people from all walks of life about matters pertaining to their finances and their future.

Chuck Schwab is the chairman of this group, and John Hope Bryant is the vice-chair. These two men have agreed to take time to take the lead, and I appreciate it.

You know, it's interesting that if we want America to be as hopeful a place as it can be, we want people owning assets. We want people investing. We want people owning homes. But oftentimes, to be able to do so requires literacy when it comes to financial matters. And sometimes people just simply don't know what they're looking at and reading. And it can lead to personal financial crisis, and that personal financial crisis, if accumulated to too many folks, hurts our country.

One of the issues that many of our folks are facing now are these sub-prime mortgages. I just wonder how many people, when they bought a sub-prime mortgage, knew what they were getting into: The low interest rates sounded very attractive, and all of a sudden, that contract kicks in and people are paying high interest rates. One of the missions is to make sure that when somebody gets a financial instrument they know what they're getting into, they know what they're buying, they understand.

We want people to own assets; we want people to be able to manage their assets. We want people to understand basic financial concepts, and how credit cards work and how credit scores affect you, how you can benefit from a savings account or a bank account. That's what we want. And this group of citizens has taken the lead, and I really thank them -- thank you a lot.

There's -- I understand that there are immediate concerns and that one of them has to do with our economy. This administration is monitoring our economy very carefully. Secretary Paulson is frequently giving me updates about conversations he's had with people around the world and, obviously, with people inside America about our economy.

We have confidence in the long-term strength of America. And so should the American people. This is a flexible, this is a resilient, this is a dynamic economy, and the entrepreneurial spirit is high. But there is some uncertainty that we're going to have to deal with. And one good way to deal with that uncertainty is to work with Congress to pass an economic growth package, a package that is big enough to affect a large

economy; a package that will stimulate consumer spending; and a package that will stimulate business, including small business, investment.

Hank had good meetings today with the leadership up there on Capitol Hill; very constructive meetings that lead me to say that I'm confident that we can get an agreement passed, and we can get an agreement passed in relatively short order. All of us want to get something done, all of us want to get something done that will be temporary and effective, and all of us want to get something done as fast as possible.

Earlier today I commented that the legislative process takes time, and I just want to make sure that people's expectations are set right. But I left the meeting that I just had in the Cabinet Room with the leadership in the House and the Senate with a very positive feeling. All of us understand that we need to work together; all of us understand that we need to do something that will be effective; and all of us understand that now is the time to work together to get a package done.

And that's why Secretary Paulson has taken the lead for our administration. He will be the negotiator for the administration. He, too, is upbeat that we can get something done.

I appreciate very much you all coming. I appreciate what you're doing. When we look back at this council, and people will say we're glad that the administration took the action it took because somebody's life is going to be better as a result of it.

Thanks for serving. God bless. Appreciate you.

need a Login Account to submit Environmental Comments. Simply click on "Environmental Comments," which will take you to the comment screen. Add the Docket number, which is "FD 35087." Select "Phillis Johnson-Ball" in the drop down list under "attention of." Then complete the form by adding your name, address, phone and email, then click "Submit."

You may also call your comments into SEA's toll-free hotline established for this proceeding. Dial 1-800-347-0689 and leave your comments after the tone. Please refer to STB Finance Docket No. 35087 in all correspondence, including E-filings, addressed to the Board.

Following these directions will help ensure that your comments are considered in the environmental review process for this proposed acquisition. In addition, SEA will add your name to its mailing list for distribution of the final scope of the EIS, the DEIS, and Final EIS (FEIS).

FOR FURTHER INFORMATION CONTACT: Ms. Phillis Johnson-Ball, SEA Project Manager, toll-free at 1-800-347-0689 (TDD for the hearing impaired 1-800-877-8339). The Web site for the Surface Transportation Board is <http://www.stb.dot.gov>. This document is available in English and Spanish by calling the toll-free number at 1-800-347-0689.

SUPPLEMENTARY INFORMATION: On October 30, 2007, Canadian National Railway Corporation (CN) and Grand Trunk Corporation (GTC), a noncarrier holding company through which CN controls its U.S. rail subsidiaries, filed an application with the Surface Transportation Board (Board) seeking the Board's approval of the acquisition of control of EJ&E West Company (EJ&EW), a wholly owned noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). In this document, the action before the Board will be referred to as the proposal or the proposed acquisition and CN and GTC will be referred to collectively as CN or as Applicants.

CN is one of Canada's two major railroads, extending from Halifax, Nova Scotia, to Vancouver and Prince Rupert, British Columbia. EJ&E is a Class II railroad that currently operates over 198 miles of track in northeastern Illinois and northwestern Indiana, consisting primarily of an arc around Chicago, IL, extending from Waukegan, IL, southwards to Joliet, IL, then eastward to Gary, IN, and then northwest to South Chicago along Lake Michigan. EJ&E provides rail service to approximately 100 customers, including steel mills, coal utilities, plastics and chemical

producers, steel processors, distribution centers, and scrap processors.

Applicants' proposed acquisition of the EJ&E would shift rail traffic currently moving over CN's rail lines inside the EJ&E arc in Chicago to the EJ&E, which traverses the suburbs generally to the west and south of Chicago. Rail traffic on CNR lines inside the EJ&E arc would generally decrease. The decreases in rail traffic would be offset by increases in the number of trains operating on the EJ&E rail line outside of Chicago (approximately 15-27 more trains would operate on various segments of the EJ&E). Applicants also proposed to construct six new rail connections and approximately 19 miles of new sidings/double tracking. Applicants give three primary reasons for seeking approval of the proposed acquisition: Improved rail operations in the Chicago area; availability to EJ&E's Kirk Yard in Gary, Indiana, and other smaller facilities in Joliet, Illinois, and Whiting, Indiana; and improved service to companies dealing in steel, chemicals, and petrochemicals, as well as Chicago area utilities.

Because this proposal has the potential to result in significant environmental impacts, the Board has determined that the preparation of an Environmental Impact Statement (EIS) is appropriate. To help determine the scope of the EIS, and as required by the Board's regulations at 49 CFR 1105.10(a)(2), SEA published in the *Federal Register* and made available to the public on December 21, 2008, the Notice of Availability of Draft Scope of Study for the EIS, Notice of Scoping Meetings, and Request for Comments. SEA held seven public scoping meetings in the project area between on January 9 and 22, 2008. The scoping comment period originally concluded February 1, 2008, but, in response to requests, SEA is extending the scoping period an additional 14 days, to February 15, 2008.

Decided: January 30, 2008.

By the Board, Victoria J. Rutson, Chief, Section of Environmental Analysis.

Anne K. Quinlan,
Acting Secretary.

[FR Doc. E8-1859 Filed 1-30-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Literacy

AGENCY: Office of Financial Education, Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Literacy (Council) will convene its first meeting on Wednesday, February 13, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, February 13, 2008, at 10 a.m. Eastern Time.

ADDRESSES: The President's Advisory Council on Financial Literacy will convene its first meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements to the Council. Send written statements in triplicate to the address identified below in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Edwin Bodensiek, Director of Outreach, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; ed.bodensiek@do.treas.gov.

SUPPLEMENTARY INFORMATION: By this notice, the Department of the Treasury is announcing that the President's Advisory Council on Financial Literacy will convene its first meeting on Wednesday, February 13, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Financial Education at 202-622-1783 by 5 p.m. Eastern Time on Monday, February 11, 2008, to inform the Department of their desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. To enter the building, attendees should provide their full name, date of birth, social security number, organization, and country of citizenship. The purpose of this meeting is to discuss general organizational matters of the President's Advisory Council on Financial Literacy and begin discussing the issues concerning financial literacy.

The Federal Advisory Committee Act (5 U.S.C. App), and implementing regulations, requires notice in the **Federal Register** 15 days in advance of a committee meeting. An agency may give less than 15 days in exceptional circumstances. This Council was created by Executive Order 13458, which was published in the **Federal Register** on January 24, 2008. The Council wishes to convene as soon as possible so that it can begin its work to educate the American people about matters pertaining to their finances, including mortgage indebtedness issues. To better meet the needs of the public on these timely matters, the Council is holding its first meeting on February 13, 2008. This notice period is being shortened by a few days for this purpose.

Dated: January 28, 2008.

Dan Iannicola, Jr.,

Deputy Assistant Secretary, Office of Financial Education.

[FR Doc. 08-447 Filed 1-29-08; 9:03 am]

BILLING CODE 4811-42-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont, and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 18, 2008.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, March 18, 2008, from 9 a.m. to 10 a.m. Eastern Time via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 718-488-2085, or write to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY

11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Audrey Y. Jenkins. Ms. Jenkins can be reached at 1-888-912-1227 or 718-488-2085, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: January 17, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-1710 Filed 1-30-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 19, 2008, at 2:30 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Inez E. DeJesus at 1-888-912-1227, or 954-423-7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, March 19, 2008, at 2:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7977, or write Inez E. DeJesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. DeJesus. Ms. DeJesus can be reached at 1-888-912-1227 or 954-423-7977, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: January 17, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-1712 Filed 1-30-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 18, 2008, at 12:30 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or 954-423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, March 18, 2008, at 12:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: January 17, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-1713 Filed 1-30-08; 8:45 am]

BILLING CODE 4830-01-P

L.A. Times (Opinion) -Increasing Financial Literacy

What you don't know can hurt you.

January 27, 2008

In the not-so-distant past, redlining -- the practice of denying financial services to people based solely on their race, sex, surname or address -- deprived many Americans of the opportunity to build a prosperous life. Today many of us still suffer financially. But this time around, we're limited by too many choices rather than too few.

Financial illiteracy has become the new redlining. Vast numbers of us go to college and own homes and cars. Our kids tote the latest cellphones, and our living room television sets have been replaced by lavish home entertainment centers. But we don't know how to budget for our households or how to balance our checkbooks. Homeowners who misunderstood or ignored the inherent risks of adjustable-rate mortgages are losing houses to foreclosure in record numbers. (In California, 31,676 households foreclosed in the last quarter of 2007, more than twice as many as the previous record in 1996.) Shoppers who ignored the fine print on credit card agreements helped push consumer bankruptcies up 40%, to 801,840, in 2007. The average college student graduates with \$2,200 in credit card debt and is more likely to drop out of school because of financial hardship than because of academic failure.

In part, the problem stems from complexities in today's credit markets. Forty years ago, a bank making a loan cared whether a borrower could pay it back because the bank held on to the loan in its portfolio. But over the last decade, lenders have been just as likely to package loans, sell them off to faceless investors and wash their hands of further responsibility. With little at stake, lenders have the incentive to loan out more and more money. In the process, they often saddle borrowers with loans they can't afford or understand.

Policymakers are addressing the most flagrant abuses, such as deceptive marketing of onerous sub-prime mortgages, by clamping down on fraud, simplifying financial disclosures and removing the obstacles that have made it hard for lenders and borrowers to renegotiate loan terms, even when it benefits all the parties involved. But the government shouldn't act like a nanny -- which means that all of these efforts will be for naught if Americans don't master basic financial skills.

We must learn to save and budget if we want to keep buying more stuff, not to mention if we want to retire with security and comfort. We must understand the concept of compound interest -- how it works in our favor when we put money each month into our 401(k)s, and hurts us when we pay only the minimum on our credit card bills. We must learn that low monthly payments don't equal affordability. We must read fine print. We must be aware of the seductive power of marketing and separate our wants from our needs. We must recognize that brokers, bankers and salespeople are trying to make a buck and aren't necessarily our friends. At the same time, the 10% or so of us who are "unbanked" or "underbanked" -- off the financial grid -- must develop basic trust in financial institutions and must understand that opening bank accounts and establishing credit are prerequisites to success in the 21st century.

Fortunately, efforts to improve financial literacy in the United States are gaining momentum. President Bush created the Treasury Department's Office of Financial Education in 2002. On Tuesday, he unveiled the President's Advisory Council on Financial Literacy, which will be co-chaired by investment guru Charles Schwab and Los Angeles-based financial literacy advocate

John Hope Bryant, and which will make recommendations for new education strategies and programs in the public and private sectors. The idea isn't to remove all risk, or to crimp consumer choices. It's to create a market that empowers citizens, as participants, to build and share in the national wealth -- to live the American dream.