

Overview of the Federal Advisory Committee Act

*Secretary's Advisory Committee on
Genetics, Health and Society (SACGHS)*
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What is a Federal Advisory Committee?

The term ADVISORY COMMITTEE means

any committee, board, commission, council, conference, panel, task force or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as “committee”) which is:

- (A) *established* by statute or reorganization plan,
- or (B) *established* or *utilized* by the President
- or (C) *established* or *utilized* by one or more agencies,

in the interest of obtaining **advice or recommendations** *for* the President or one or more agencies or officers of the Federal Government, EXCEPT THAT such term **excludes**:

What is a Federal Advisory Committee? (continued)

- (I) the Advisory Commission on Intergovernmental Relations;
- (II) the Commission on Government Procurement;
- (III) any committee which is composed **WHOLLY of FULL-TIME** officers or employees of the **Federal Government**; and
- (IV) any committee that is created by the National Academy of Sciences or National Academy of Public Administration.

Why did Congress enact FACA?

Congress Found:

- ◆ groups established to advise Federal officers and agencies are a useful and beneficial means of providing expert advice, ideas, and diverse opinions to the Federal Government
- ◆ Standards and uniform procedures should govern the establishment, operation, and duration of advisory committees
- ◆ Congress and the public should be kept informed of the number, purpose, membership, activities, and cost of advisory committees

Primary Laws and Regulations Governing Advisory Committees

The following laws govern how advisory committees are managed and how they function:

- ◆ The Federal Advisory Committee Act (FACA) – PL 92-463, 5 U.S.C. App.
- ◆ The Government in Sunshine Act – PL 94-409
- ◆ The Privacy Act – 5 U.S.C. 552
- ◆ The Freedom of Information Act (FOIA) – 5 U.S.C. 552a
- ◆ GSA’s Federal Advisory Committee Management regulations – 41 C.F.R. 102-3.

Primary Requirements for FACA Committees

- ◆ Advisory committee meetings should be open to the public, except in limited circumstances, e.g., unwarranted invasion of personal privacy or disclosure of trade secrets, with prior agency approval.
- ◆ Notice of all meetings must be published in the Federal Register at least 15 calendar days before meetings.
- ◆ All reports, transcripts, minutes, working papers, studies, agendas or other documents made available to advisory committee members shall be available for public inspection and copying.

Primary Requirements for FACA Committees (continued)

- ◆ A Federal official must attend all meetings and approve the agenda.
- ◆ Minutes must be kept of all meetings and certified by the Chairperson.
- ◆ Financial records must be kept and two annual reports are to be submitted each year to determine if the committee is carrying out its purpose, and to summarize the committee's activities and other related matters that would be informative to the public.
- ◆ All Federal advisory committees must be chartered and the charters must be renewed every two years.
- ◆ Membership must be balanced in terms of points of view represented and the functions to be performed.

Activities Not Subject to FACA's Notice and Open Meeting Requirements

- ◆ Meetings of two or more advisory committee members or subcommittee members,
 - *Preparatory Work*: solely to gather information, conduct research, analyze or draft position papers for the advisory committee, or
 - *Administrative Work*: solely to discuss administrative matters of the advisory committee or receive administrative information from the Federal officer or agency.
- ◆ But, if a subcommittee makes recommendations directly to a Federal agency, or its recommendations will be adopted by the advisory committee without further deliberation, then meetings must be noticed and open.

Responsibilities of the Designated Federal Officer (DFO)

FACA mandates that all Federal advisory committees and their subcommittees have a Federal officer or employee appointed as a “Designated Federal Officer.”

The Designated Federal Officer:

- ◆ approves or calls the meeting of the advisory committee
- ◆ approves the agenda
- ◆ attends the meeting
- ◆ adjourns the meeting when such adjournment is in the public interest or in the best interest of the Government
- ◆ chairs the meeting when so directed by the agency head
- ◆ ensures that detailed minutes of each advisory meeting are prepared and certified

Federal Advisory Committee Members

- ◆ serve by appointment and have the full right and obligation to participate in the activities of the committee, including voting on committee recommendations
- ◆ are compensated for time spent at meetings and site visits and are reimbursed for travel expenses incurred in connection with those activities
- ◆ refer questions from the public to the committee's Designated Federal Officer (DFO)
- ◆ abstain from participating in discussions or actions regarding any matter that is a conflict of interest and comply with applicable government ethics rules

Summary: Key FACA Points

- ◆ FACA regulates the committees that give advice to the government.
- ◆ FACA advisory committee's must provide a meaningful way for the public to participate
 - Notice
 - Deliberate in public
 - Public access to records