

Federal Advisory Committee Act and the Scientific Management Review Board

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Review: What is FACA?

- FACA - Federal Advisory Committee Act (Public Law 92-463, as amended).
- Defines a Federal advisory committee and establishes a system to govern Federal advisory committees in the Executive Branch of the Federal Government.
- Created to ensure that the public has access to the deliberations of advisory committee meetings and that there is accurate accounting of committee costs, activities, membership, etc.
- Explains the responsibilities of the President, Congress, Agency Heads, and other Federal officials in relation to the establishment and management of functions of Federal advisory committees.

Compliance

- Any advisory group established or utilized by a Federal agency with one or more non-Government members must comply with FACA.

- Most important provisions for you:
 - Compensation and expense reimbursement;
 - Membership balance;
 - Presence of Federal Officer at all meetings;
 - Open and closed sessions; and
 - Public accessibility to information provided to, and generated by, members

Exemptions

➤ Exemptions from the Government in the Sunshine Act are common at NIH when information discussed is:

- **Proprietary;**
- **Subject to the Privacy Act;**

and rarely when information discussed:

- **Would frustrate implementation if prematurely disclosed.**

Statistics

- NIH has 151 advisory committees
- Approximately 33,000 committee members and peer reviewers served on advisory committees and peer review study groups at NIH in the past year
- NIH held nearly 3,000 meetings in FY 2008
- NIH spent 150 M on committee related business

SMRB's Scope

- Evaluating NIH research portfolio
- Determining scientific opportunities and public health needs relevant to NIH mission
- Assessing organizational issues
- Meetings, consultations and forums required
- Report on the above to Congress, HHS and NIH at least once every seven years

Outside SMRB's Scope

- Final NIH actions that follow from board's reports, recommendations or approvals
- Internal NIH personnel matters
- Final NIH budget actions
- Official NIH communications

Role of Working Groups

- Gathering information, conducting research and analyzing issues in preparation for an advisory committee meeting
- Drafting position papers for deliberation at an advisory committee meeting

Federal Advisory Committees vs. Working Groups

Issue	Federal Advisory Committee	Working Group
Subject to FACA Laws & Regulations	Yes	No
Provides Direct Advice to the Government	Yes	No
Federal Official Present at all Meetings	Yes	Yes
Reports to a Federal Advisory Committee	No	Yes
Temporary in Nature	No	Yes
Must Have an Open Public Session	Yes	No
Must be Advertised in the Federal Register	Yes	No
Must Contain Members of the Chartered Advisory Committee	Yes	No
Balanced Expertise, Points of View, Geographic, Ethnic, Gender Representation	Yes	Highly Recommended
Must Have a Process for Dealing with Conflict of Interest	Yes	Yes

What's New

- Current Administration's emphasis on transparency and open government
- FACA Amendments of 2009 introduced in the House of Representatives

Proposed FACA Amendments of 2009

- Impact on SMRB
 - Conflicts of interest disclosure
 - Subcommittees/working groups
 - Information requirements
 - Public accessibility

- Status in Congress

Frequently Asked Questions

- May committee business be discussed at social gatherings of advisory committee members?
- Can we vote via e-mail?
- May web technology be used when conducting advisory committee meetings?

For More Information

➤ **Please contact me:**

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➤ **Refer to Website:**

Office of Federal Advisory Committee Policy Home Page:

<http://www1.od.nih.gov/cmo/>