

The Federal Advisory Committee Act of 1972

The Federal Advisory Committee Act (FACA) of 1972 (Public Law 92-463) was enacted by Congress to formally recognize the merits of seeking the advice and assistance of our nation's citizens. Congress sought to assure that advisory committees would provide advice that is relevant, objective, and open to the public. In addition, Congress sought that advisory committees would act promptly to complete their work and comply with reasonable cost controls and recordkeeping requirements.

Frequently Asked Questions

What is a Federal Advisory Committee?

An advisory committee is any committee, board, commission, council, conference, panel, task force, or other similar group which is -- established by statute or reorganization plan; established by the President; or is established or utilized by one or more agencies of the Federal government pursuant to agency authority. The purpose of such committees is to provide policy advice to the Federal government.

When does the Federal Advisory Committee Act apply?

FACA applies when non-Federal persons participate in an advisory committee established or utilized by the Federal government to provide policy advice. Case law has determined "utilize" to mean actual management or control of the group by the Federal government. FACA involves an inherent group action. Groups, however, do not necessarily have to achieve a consensus when giving advice to be subjected to FACA. The D.C. Circuit Court has dismissed the argument that FACA applies only where a group gives consensus advice. FACA applies when a group is asked to render advice or recommendations as a group and not a collection of individuals.

How is a FACA committee formed?

As previously mentioned, a FACA committee can be formed when required by statute, issued pursuant to a Presidential authority, authorized by statute, or authorized by an agency. In order to establish a FACA committee the GSA Committee Management Secretariat must be consulted, a charter must be prepared, and notice of the establishment of the committee must be published in the Federal Register. Advisory committees automatically terminate two years after its date of establishment unless the agency renews the charter, terminates the committee earlier, or statutory authority is used to establish a different duration.

Whether proposing to establish a new advisory committee or a committee as directed by statute, there are internal DOE procedures that must be followed. Before submitting proposal packages for establishing a committee, program offices should contact DOE's Committee Management Officer or the Office of the Assistant General Counsel for General Law for assistance on preparing a formal request and guidance on selecting committee members. Requests include an Action Memo to the Secretary describing the need for such a committee, a proposed charter, a

proposed Federal Register “Notice of Intent to Establish,” and a discussion of the consultation with the GSA Committee Management Secretariat.

Who are the advisory committee members?

Advisory committee members are nominated, selected, and ultimately appointed by the Secretary based on their qualifications to contribute to the committee’s objectives. Further, the membership of the advisory committees must reflect a fair balance of interests and view points. Members may include, among others, individuals affiliated with universities, large corporations, research organizations, and national laboratories. In certain circumstances, Federal employees and employees working for management and operating (M&O) contractors may serve on an advisory committee.

Committee members can serve either one of two ways – as an expert in a particular field or discipline or as a representative of a certain organization, industry, or group. Members who are appointed because of their expertise are required to become special Government employees (SGEs). SGEs are considered Federal employees and are subjected to the criminal conflict of interest statutes and the Standards of Ethical Conduct for Executive Branch Employees. In addition, SGEs are required to complete a confidential financial disclosure report in which they list assets and relationships they believe may cause a conflict of interest.

What groups or committees are not covered by FACA?

Examples of these groups include: committees not actually managed or controlled by the executive branch; groups assembled to provide individual advice; and groups assembled to exchange facts or information. Individuals requesting appointments with DOE officials for purposes of relating information to the Department do not generally trigger the FACA requirements.

Can DOE officials meet with state, local or tribal government officials to discuss certain issues or obtain advice on a particular matter?

DOE officials can meet with any committee or group composed *exclusively* of Federal officials and elected officials of state or local government (or their designated employees with authority to act on their behalf). Further, DOE officials may also meet *exclusively* with representatives of tribal governments. The purpose of such meetings, however, must be to exchange views, information, or advice relating to the management or implementation of Federal programs established that share jurisdiction with the state, tribe, or local governments.

Can DOE officials meet with industry representatives with the purpose of seeking advice on certain programs or initiatives?

Yes and no. It is permissible for DOE officials to meet with a group, including at a public meeting, where the advice is sought from those in attendance on an individual basis and not from the group as a whole. Further, DOE officials may meet with groups of industry representatives so

long as the meeting is for the purpose of exchanging facts or information. DOE officials must be careful in such meetings to avoid the appearance that the purpose of these meetings is to obtain advice as an industry group. To avoid allegations that the object is to receive collective advice, individuals participating should not comment on others' presentations, question others, or question the group's process. When this occurs, the meeting begins to look more like a meeting of a group and that the advice is that of a group. FACA applies when a group is asked to render advice or recommendations as a group and not a collection of individuals.

Is it permissible for DOE officials to accept unsolicited advice from industry or other non-Federal organizations?

Yes. Often non-Federal organizations provide departments and agencies with unsolicited advice regarding its programs. DOE can accept this advice without fear of violating FACA because the group that provided the unsolicited advice was created by a non-Federal entity (such as a contractor or private entity) and was not actually managed and controlled by DOE (or the Federal government).

Can DOE officials request advice from a contractor?

FACA is not triggered when requesting advice from a contractor when such advice is required by contract or when the contractor is providing individual advice to DOE. There is also a special exemption for employees of M&O contractors of DOE. When these employees are serving as members of a group reviewing or advising on matters related to any one or more DOE M&O contracts, the employees should be treated as officers or employees of DOE for purposes of determining whether the group is an advisory committee.

What happens if a contractor establishes a committee or group for the purpose of providing advice?

So long as the committee or group was not created by DOE or the Federal government and the committee or group is not managed or controlled by DOE, the contractor committee or group may provide unsolicited advice to DOE. Management and control typically involves, but is not limited to, issuing charges to the committee, determining membership of the committee, and providing structure to committee meetings.

Can a DOE employee attend a series of meetings held by an energy industry association and a public interest group to discuss the collection of data?

In general, a DOE employee can attend a series of meetings organized by an energy industry association and a public interest group because the group was not created by DOE or another Federal agency and so long as the DOE employee does not manage and control the group.

Can DOE solicit specific information from the public, including those groups affected by Department programs?

Yes, DOE may hold public meetings at which it may pose specific questions for input. DOE may make presentations and receive both written and verbal testimony in response to those presentations. DOE may not limit who is permitted to present information; however, DOE can establish reasonable time limits for comment on a first come first serve basis.