



FACA FAQs for Managers

GSA Committee Management Secretariat

Background:

The Federal Advisory Committee Act (5 U.S.C., App) or FACA, and the FACA Implementing Regulations (41 CFR 101-6 and 102-3) provide the basis for and guidance concerning the management and operation of federal advisory committees (FACs). Typically, groups subject to FACA require open, pre-announced meetings; public access to discussions, deliberations, records and documents; opportunity for the public to provide written (and often oral) comments; fairly balanced membership; and the evaluation of conflicts of interest for certain members. In general, the provisions of FACA apply when the government utilizes (i.e., manages and controls) an outside group (two or more individuals) to provide advice and recommendations to a Federal official. There are also exceptions and best practices that allow managers to solicit advice outside of the FACA structure.

Frequently Asked Questions:

1. *Can a federal official meet with members of the public without it being subject to FACA?*

Yes. Obtaining advice from the public can be done through public hearings, town hall meetings, or notice and comment procedures. Officials may also meet with individuals at any time, and with groups (two or more people) under certain circumstances.

2. *Can advice be obtained from a single individual, or individual advice from each of several members of a group, without invoking FACA?*

Yes. Obtaining advice from a single individual does not invoke FACA. Obtaining non-consensus advice from each individual in a group, similarly, does not invoke FACA.

3. *Does FACA apply to an advisory group if the group is composed solely of Federal, state, or local government employees, or tribal representatives acting in their official capacities?*

No. However, ALL members of the group in question must fit these categories. A single member from an outside group (academic, industry, public interest, etc.) can make the group subject to FACA.

4. *Should all non-Federal groups or committees with whom an agency collaborates be chartered under the Federal Advisory Committee Act (FACA)?*

No. Federal agencies collaborate with many groups comprised, at least in part, of non-Federal officials. If the agency does not exercise actual management or control (see next response) over these groups, they are not subject to FACA.

5. *What about committees or groups established by an agency? Does the mere fact that an agency establishes a group mean that it is subject to FACA and should be chartered?*

No. First, the agency must be seeking advice and/or recommendations. Second, the agency

must utilize or "exercise actual management or control" over the committee or group. While there is no precise legal formula to determine when an agency has crossed this threshold, consider whether or not:

- The agency selected the group's members.
- The agency funds the group's activities.
- The agency sets the group's agenda.
- The agency arranges meeting dates and/or locations.
- The agency uses the group recurrently.
- The agency has given the group a formal structure.

A "Yes" answer to any of the above can suggest that FACA is involved. When in doubt, you should request additional advice from your agency General Counsel's office. When Special Government Employees (SGE) are anticipated as members, you should also consult with the General Counsel regarding the applicability of ethics rules.

6. Can federal officials and staff participate in the activities of existing outside groups or committees without invoking FACA?

Yes. Federal participation as a member of a group does not invoke FACA. How the group is used and whether a federal agency utilizes it or not are more relevant. There are additional restrictions on how federal employees may participate in associations and similar organizations, including payment of dues or fees. For additional guidance, contact the General Counsel's office.

What to Do when Establishing a FAC:

- Before you do anything else, contact the Committee Management Officer (CMO) at your agency as soon as possible. The CMO will assist in bringing your committee up quickly.

- Clearly think out the purpose for which you need outside advice and recommendations. Do you *really* need an advisory committee or would another tool, such as a survey or public meeting work as well? You can always ask advice from individuals without invoking FACA.
- Write down a concise statement covering the committee's mission, including estimates for its duration, costs, and required staff support. In planning the committee's work, prepare a charge or statement of work so that the members will understand exactly what is expected of them.
- Obtain appropriate internal approvals for the committee **BEFORE** you announce your intentions to the public. There is a governmentwide ceiling for discretionary advisory committees. This ceiling is managed by the GSA Committee Management Secretariat.
- Analyze who should be on the committee or any subcommittee – do you need individuals of a certain expertise, or do you need certain groups (e.g., from a specific industry) to be represented? The former are Special Government Employees (SGEs) and the latter are Representative Members. SGEs require a more formal appointment and they are subject to ethics restrictions and conflict of interest evaluations. Representatives are not subject to these rules. Do not appoint members as representative members merely to avoid ethics or conflict of interest evaluations.
- Ensure that the group is balanced fairly with regard to points of view represented and functions to be performed. Geographical or other balance can be considered as well, but is secondary.
- Choose someone from your staff to manage the committee -- and stick with that decision. Continuity is important to the members and the smooth functioning of the committee. FACA requires that a Designated Federal Officer (DFO) be appointed to protect the government's interests. Check with the CMO for details.
- Be sure to obtain proper training for the DFO and staff supporting the committee, and be sure that the committee chair and members understand what is

expected of them and the limitations they face as advisory committee members (both in terms of the committee process and other Federal requirements, as well as in regard to ethics issues). Formal governmentwide DFO training is provided by the GSA Committee Management Secretariat.

- Expect that this will take longer than you think.

What NOT to Do when Establishing a FAC:

- Don't underestimate the amount of staff support required to adequately support a FACA committee. Most administrative support activities are reserved to Federal employees, while generation of advice and recommendations are the duties of the members.
- Don't let the committee members run their committee – Although the chair runs the meetings, the DFO must approve the agenda and call the meetings. Formation of subcommittees or other subgroups is a federal function. Committees do not have the authority to establish subgroups – however, they can recommend to the agency that this be done. In general, most members are unaware of the rules and potential problems that can occur. Some of these can have legal consequences. An informed and well-trained DFO is crucial.
- It is not necessary to compensate advisory committee members unless required to balance a committee's membership or to offset unusual time demands. In general, there are many credible and competent organizations and/or individuals willing to perform public service without cost to the government. On the other hand, members may be

entitled to travel and per diem reimbursements when necessary.

- Don't forget to train members on laws and regulations that they must be familiar with or with which they must comply. While "on-duty" they are subject to the same rules of conduct that Federal officials are. This is particularly important in the ethics area.

FACA WEB References:

The Federal Advisory Committee Act (FACA) –
<http://0225.0145.01.040/oip/facastat.pdf>

FACA Implementing Regulations (41 CFR 101-6 and 102-3) –
http://www.gsa.gov/gsa/cm_attachments/GSA_DOCUMENT/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf

Committee Management Secretariat Website -
<http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8203&channelPage=/ep/channel/gsaOverview.jsp&channelId=-13170>

The GSA FACA Database -
<http://www.fido.gov/facadatabase/>

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