

What do members need to know about Federal Advisory Committee Act¹?

Top 10 Questions about FACA

1. *What activities of an advisory committee are not subject to the notice and open meeting requirements of the Federal Advisory Committee Act(FACA)?*

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.

2. *Can we meet without the Designated Federal Official (DFO)?*

No, FACA specifically requires DFOs to convene and attend the meetings. No one else can convene a committee meeting. Subcommittees have the same requirements, but do not require public notice and access.

3. *Can we ask someone to join the committee in making recommendations for a specific meeting?*

No. The appointment procedures must be followed for anyone taking on the role as a standing committee member. Further, subcommittee members and consultants require the same background clearance as standing members. However, as vacancies arise, the committee is always welcomed to submit nominations to the DFO.

4. *What other situations don't require public notice and access?*

- a) 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.
- b) Groups assembled to exchange facts or information. Any group that meets with a Federal official(s) for the purpose of exchanging facts or information.
- c) 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.
- d) 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.

5. *What is our ultimate charge?*

Your deliberations should result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business; you should make recommendations resulting in significant improvements in service or reductions in cost; or you'll provide an important additional perspective or viewpoint affecting agency operations.

6. *Do we have any performance measures?*

It is strongly recommended that your committee document your recommendations at least annually and submit them to the agency. Provide a rationale and discussion for each recommendation. It is also helpful to attach a letter from the chair of the committee that summarizes the general process and dynamics promoted to arrive at the recommendations. Keep in mind that the report of recommendations is a permanent Federal record and may be posted on the committee's website.

¹ This Q&A is based on 41 CFR Parts 101-6 and 102-3 Federal Advisory Committee Management; Final Rule. Published July 19, 2001 and other Federal guidelines.

7. *Can we set our own agenda?*

No. The agency must set your meeting agendas. However, the committee can submit suggestions for agenda topics to the DFO, usually through the committee chair.

8. *Can a few of us discuss meeting topics over dinner?*

If the committee creates a subcommittee, with consent from the DFO, the DFO must be present for all subcommittee activities regardless of the setting. The DFO must also register the subcommittee in the FACA record before it operates. Otherwise, any deliberations that could result in new or revised recommendations to the agency must be done in full compliance with FACA. This includes public access to the deliberation (unless the meeting is closed to the public) and complete control by the agency, as shown through the DFO.

9. *How do we select the chair and what is their job?*

The DFO will explain the procedure for selection of your committee chair. The chair:

- Approves meeting minutes
- Works with the DFO to ensure the rules and spirit of FACA are upheld and committee bylaws are followed
- Leads the committee to a consensus and/or determines when the committee is ready to vote on a recommendation
- Facilitates special requests from the committee to the agency
- Approves the final set of recommendations to the agency
- Provides support to the agency in identifying expertise needed on the committee to fill vacancies or to develop a subcommittee
- May influence an agency's decisionmaking on overall committee membership

10. *If I change jobs while appointed as a committee member, should I tell the DFO?*

Possibly. If you were appointed to represent your employer's point of view on the committee, then you would need to notify the DFO of your employment change. The DFO will determine what action, if any, must occur. Similarly, it is important for the DFO to know if you have become a Federal employee or if your new employer is already represented on the committee.

10a. What other changes should I tell the DFO about?

Tell the DFO if you have

- Changes to your e-mail address or other contact information
- Become a Federal lobbyist
- Applied to join another USDA Federal advisory committee
- Entered into a lawsuit against USDA
- Lost your credentials--if those credentials were an important factor to your appointment to the committee
- New health concerns that influence your ability to travel or that require special accommodations during meetings
- A potential conflict of interest with an agenda issue or if you are otherwise uncomfortable providing advice due to a perceived conflict of interest; especially conflicts previously unknown to the DFO