



# The Federal Advisory Committee Act (FACA)

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Advanced Scientific Computing Advisory Committee  
(ASCAC)

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# FACA Regulations

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- Federal Advisory Committee Act of 1973 (Public Law 92-463) codified in 5 U.S.C. App.
  - FACA Amendments of 1997 (Public Law 105-153)
- Government in the Sunshine Act of 1977 (Public Law 94-409)
- Executive Order 12838
- OMB circular A-135, dated Oct. 5, 1994
- GSA codified rules for “Federal Advisory Committee Management” in 41 CFR Part 101-6 as revised July 19, 2001.
- DOE rules for an “Advisory Committee Management Program” in DOE Order DOE M 515.1-x (in review to replace DOE M 510.1-1)



# FACA

## Basic Purposes

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- To enhance public accountability of advisory committees.
  - To control undue influence of special interests by balancing committee membership and to ensure that public access to committee deliberations is maximized.
- To reduce wasteful expenditures on advisory committees.
  - To Improve the overall management of committee activities by establishing a set of management controls to:
    - Monitor Federal advisory committee costs;
    - Identify and eliminate unproductive and/or unnecessary committees; and
    - Provide for an annual report of committee activities and accomplishments to the Congress.



# FACA

## Facts and Figures

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- 900 to 950 FACA committees
  - HHS has over 250 committees and 3,400 meetings
- Over 45,000 committee members
- Nearly 7,000 meetings held in FY06
  - Approximately 2/3 closed
- Nearly 1,000 reports issued in FY06
- At a cost of nearly \$400 million in FY06
  - 40% for federal staff support
  - 20% for travel and per diem
  - 20% miscellaneous costs – including publishing reports



# FACA

## Agency Responsibilities

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- Develop and file a charter
- Maintain a balanced membership
- Hold open meetings
  - Reasonably accessible to the public, including the disabled
  - Allow public to speak or file written statements
  - Announce all meetings in the Federal Register no fewer than 15 days in advance
- Maintain all committee documents for public inspection
- Ensure the advisory committee is adequately funded and staffed
- Continuously seek feedback from advisory committee members and the public regarding the effectiveness of the committee activities
- Communicate with members and public as to how advice has influenced agency programs and decision-making
- Satisfy reporting requirements, ethics and conflict-of-interest rules
- Designate an employee of the Federal Government to chair or attend each meeting – Designated Federal Official (DFO)



# FACA

## DFO Responsibilities

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- Oversight of FACA and the Committee
- Call, attend, and adjourn committee meetings
- Approve agendas
- Maintain required records on costs and membership
- Ensure efficient operations
- Maintain records
  - For availability to the public
  - For reporting requirements
- Provide copies of committee reports to the Committee Management Officer for the Library of Congress
- Chair meetings when so directed by the agency head
- If necessary to close a meeting, document decision in writing with General Council review



# FACA

## Committee Membership

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- Federal Advisory Committee members are drawn from nearly every occupational and industry group and geographical section of the U.S.
- The FACA requires that committee memberships be “fairly balanced in terms of the points of view represented and the functions to be preformed.”
- As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring organization.
- In balancing committee membership, agencies are expected to assure that major-and sometimes strongly opposing-points of view are represented to provide a foundation for developing advice and recommendations that are fair and comprehensive.



# FACA Committee Membership (cont.)

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- Agency officials, Members of Congress, the general public, professional societies or current and former committee members may nominate potential candidates for membership.
- Selection of committee members is based on the FACA's requirements and the potential member's background and qualifications. Final selection is made by the President or the heads of agencies.
- Prior to accepting an appointment with a federal advisory committee, each prospective member should meet with the appropriate agency Committee Management Officer and Designated Agency Ethics Official, to discuss duties and obligations, allowable expenses and compensation limitations.





# FACA

## Subcommittees

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- Subcommittee that report to a parent advisory committee generally are not subject to FACA.
- However,
  - if the advice or recommendations of a subcommittee are provided directly to a Federal officer or agency, then the subcommittee is subject to FACA
  - if the advice or recommendations of a subcommittee are not subject to deliberation by the parent advisory committee then the subcommittee is subject to FACA
    - “It is not permissible for a parent advisory committee to ‘rubber-stamp’ the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in an advisory committee’s deliberations.”
- In addition, preparatory and administrative meetings are not subject to the notice and open meeting requirements.



# FACA

## Subcommittees (cont)

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- Questions to ask to ensure the subcommittee does not fall under FACA
  - Is there a group?
  - **What is the groups purpose for meeting?**
  - **Does the group provide collective advice?**
  - **Who does the group advise?**
  - Who are the groups members?
  - **Who establishes the group?**
  - **Who manages and controls the group's activities?**
  - How often does the group meet?
  - **Will the parent FACA committee publicly deliberate on the group's recommendations?**

*U.S. Department of Energy*



*Office of Science*

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# Backup



# Special Government Employees

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- An officer or employee of the Executive or Legislative Branch of the U.S. Government
- Retained, designated, appointed, or employed to perform, with or without compensation
- Temporary duties, either on a full-time or intermittent basis
- For not more than 130 days during any period of 365 consecutive days
- See, title 18, United States Code, Section 202



# Representatives

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- Not an Employee
  - Does the member receive any compensation?
  - Is the member appointed based on the recommendation of some outside group or organization?
  - Does the member have the authority to bind outside organizations?
  - Does the member act as a spokesperson for the U.S. of government agency regarding committee matters?
  - Is the member expected to provide impartial or individual advice?
- Appointed for the sole purpose of obtaining the points of view or perspective of outside interest groups of stakeholders (e.g. labor unions, consumers, an industry sector, or other recognized group of persons interested in committee matters)
- May have expertise in a specific are, discipline or subject matter but they are NOT appointed to provide independent advice in committee matters.



# FACA Guidelines

5 U.S.C., app. Page 484

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- A FACA committee must:
  - have a clearly defined purpose
  - be fairly balanced in terms of the points of view represented and the functions to be performed
  - contain appropriate provisions to assure that the advice and recommendations of the committee will not be inappropriately influenced by the appointing authority or by any special interest but will instead be the result of the committee's independent judgment
  - contain provisions dealing with authorization of appropriation, submission and publications of reports, and duration of the committee
  - contain provisions which will assure that the committee will have adequate staff, quarters and funds



# FACA Required Procedures

5 U.S.C., app. Page 488

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- Meetings must be open to the public
- Must keep accurate minutes
- Records, reports, transcripts, minutes, etc. Must be publicly available
- If necessary to close a meeting, that decision must be documented in writing
- Must have a Designated Federal Officer (DFO) who must be present for all meetings and may adjourn meetings in the public interest
- Shall not hold any meetings except at the call of, or with advance approval of, the DFO with an agenda approved by the DFO



# FACA Committee Membership (cont.)

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- Appointment types
  - Regular Government Employees
  - Special Government Employees
  - Representative Members
  - Ex Officio Members
  - Peer Review Consultant Member
    - NIH peer review Federal advisory committees





# ASCAC Specifics

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- Secretary of Energy.
  - Approves the selection and appointment of members to DOE advisory committees, except those members who are appointed by the President.
  - Appoints a Committee Management Officer and a Designated Federal Officer
  - Is ultimately responsible for—
    - ensuring that advisory committees not be unduly influenced by their appointing authority or special interests,
    - complying with conflict of interest statutes and provisions, and
    - addressing with the Office of General Counsel (GC) problems arising from advisory committee member ethics restrictions.
- Executive Secretariat
  - Acts as CMO – approves charters, meets reporting requirements, issues guidance
  - Deputy CMO (Rachel Samuel)
- General Council
  - Provides legal assistance and advice concerning FACA compliance and management, Conflicts of Interest, Financial Disclosures, Ethics requirements for SGEs, FOIA, etc.
  - ASCR Council (Christina Hymer)
- Human Resources
  - Makes Special Government Employee Appointments (ASCR Interface: Nancy White)
- Head of Departmental Element - Under Secretary for Science
  - Issues Charges and receives reports
- Designated Federal Officer (Christine Chalk)
- Program - Office of Science - Advanced Scientific Computing Research
  - Responsible for responding to advice and recommendations (Michael Strayer)