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Federal Advisory Committee Act (FACA): Committee Establishment and Termination

Federal advisory committees are created by Congress, Presidents, and executive branch agencies to gain expertise and policy advice from individuals outside the federal government. Establishing an advisory committee may also allow the federal government to provide a forum where potentially controversial topics may be discussed by experts outside the political arena and reduce the workload of executive branch employees and Members of Congress.

Many federal advisory committees are subject to the Federal Advisory Committee Act (FACA; 5 U.S.C. Appendix), which has chartering and transparency requirements. The method by which a committee is established under FACA also provides for how the committee may be terminated. Decisions on whether a specific committee is subject to FACA rests on many factors and is often made on a case-by-case basis.

The Committee Management Secretariat (hereinafter “Secretariat”) of the General Services Administration (GSA) is responsible for all matters relating to advisory committees subject to FACA. As part of this responsibility, GSA has issued guidance on committee establishment and termination procedures (“Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37738-37740, 2001).

This In Focus details the ways in which a federal advisory committee may be established, how a committee may be terminated, and previous efforts to limit the number of committees within the executive branch. For more information on FACA, see CRS Report R44232, *Creating a Federal Advisory Committee in the Executive Branch*, by Meghan M. Stuessy.

Committee Establishment

All federal advisory committees subject to FACA must submit charters to the GSA Administrator in order to be formally established. The charter must define the federal advisory committee’s mission or charge, its specific duties, and general operating characteristics. The charter must be filed with the advisory committee’s agency head, the agency’s Senate and House committees of jurisdiction, the Secretariat, and the Library of Congress. (“Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37739.) A committee cannot meet or take action without filing a charter, which must also be refiled every two years (5 U.S.C. App. §9).

Methods to Establish an Advisory Committee

Committees may be established under FACA by one of four methods, which are further categorized as either “non-discretionary” or “discretionary” committees.

A non-discretionary advisory committee is either a:

- *presidential advisory committee* mandated by presidential directive, or
- *statutory advisory committee* mandated by statute.

A discretionary advisory committee is either:

- established under *agency authority* in cases when nonfederal input might benefit agency decisionmaking, or
- *authorized by law* under specific authorization from Congress.

Differences Between Discretionary and Non-Discretionary Committees

Discretionary committees face more procedural hurdles in the chartering process than non-discretionary committees do. In order to establish, renew, or reestablish a discretionary committee, an agency must consult with the Secretariat and explain (1) why the committee needs to be established; (2) why its existence is essential to the conduct of agency business and is in the public interest; and (3) how the committee’s functions cannot be performed by the agency, another existing committee, or other means such as a public hearing.

A non-discretionary committee, by comparison, performs the functions provided for in statute or in the establishing presidential directive.

Creating a Committee by Legislation

When considering legislation that establishes or authorizes the establishment of any advisory committee, FACA requires Congress to include five factors in the legislation:

1. a clearly defined purpose for the advisory committee;
2. a fairly balanced advisory committee membership in terms of the points of view represented and the functions to be performed by the advisory committee;
3. appropriate provisions to ensure that the advisory committee’s recommendations are the result of its independent judgment;
4. provisions dealing with authorization of appropriations, the date for submission of reports (if any), and the duration of the advisory committee; and

5. provisions to assure that the advisory committee will have adequate staff and funds, which may be supplied by an agency (5 U.S.C. App. §5).

Such factors are also reflected in FACA's chartering information requirements (5 U.S.C. App. §9).

Committee Termination

All advisory committees subject to FACA must renew their charters with GSA every two years or cease operations. However, discretionary and non-discretionary advisory committee charters may differ in descriptions of a committee's expected duration (5 U.S.C. App. §14).

For example, a discretionary committee charter typically indicates that it is expected to terminate two years from the date the charter is filed unless the charter is renewed prior to termination. In contrast, a non-discretionary presidential advisory committee charter typically indicates that the need for the committee is continuing but is subject to renewal every two years. A presidential advisory committee may terminate earlier if the executive order establishing the committee is rescinded.

A statutory advisory committee may exist for any period that its establishing statute provides. A statutory advisory committee charter typically indicates that the committee will terminate on a specific date and is subject to renewal every two years until that date. A statutory advisory committee that waives the Section 14 termination requirement in its establishing statute may exist indefinitely and be terminated only by additional legislation. However, a statutory committee must still have its charter approved every two years. GSA considers a statutory committee with an indefinite termination date and no approved charter to be administratively inactive, and the committee is unable to conduct business until a charter is approved.

The Administrative Conference of the United States has recommended that, as a best practice when creating a statutory committee, Congress "should provide guidance concerning the intended duration of each such committee or, alternatively, a clear explanation of the committee's mission and a provision that the committee should terminate upon completion of that mission."

Efforts to Reduce Number of Committees

Congress and other establishing entities are encouraged by statute and FACA's implementing guidance to consider whether or not a new committee's purposes would be duplicative of existing efforts. Two executive orders (E.O.s), E.O. 12838 issued in 1993 and E.O. 13875 issued in 2019, have sought to reduce the number of advisory committees in an effort to improve advisory committee efficiency and reduce redundancy.

E.O.s cannot terminate statutory advisory committees. However, these E.O.s do directly affect discretionary committees established by executive agencies and suggest changes to committees established by or subject to renewal by presidential directive.

Congressional Review of Duplicate Committees

5 U.S.C. App. §5(b)

"In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee."

Executive Order 12838

E.O. 12838 required that one-third of discretionary advisory committees subject to FACA be terminated by the end of FY1993. The order also required that proposed new committees be approved by the Director of the Office of Management and Budget (OMB) in addition to existing GSA Secretariat approval requirements.

E.O. 12838 was later incorporated into OMB *Circular No. A-135*, which, among other powers, permits OMB to set advisory committee ceilings for each agency. These limits do not affect non-discretionary committees. However, *Circular No. A-135* encourages agencies to work with OMB to develop legislation for Congress to terminate non-discretionary statutory committees that are no longer considered necessary.

To determine the effectiveness of E.O. 12838 in improving committee efficiency, the Government Accountability Office (GAO) studied the impact of E.O. 12838 in 1997 (T-GGD-98-24). GAO found that the overall number of federal advisory committees had declined by one-third since 1993. However, the number of members per committee and committee costs rose during the same five-year period. GAO suggested that increased costs and membership may have been the result of committee mergers.

Executive Order 13875

E.O. 13875 revisited aspects of E.O. 12838 and directed the termination of at least one-third of discretionary advisory committees by September 30, 2019. E.O. 13875 required an agency to apply for a waiver from OMB to create a new advisory committee if the number of discretionary committees government-wide exceeded 350. E.O. 13992, issued on January 20, 2021, revoked E.O. 13875. For more information about E.O. 13875, see also (archived) CRS Insight IN11139, *Executive Order to Reduce the Number of Federal Advisory Committees*, by Meghan M. Stuessy.

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