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Federal Advisory Committee Act (FACA): Meeting Requirements

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 Congress.

Many federal advisory committees are subject to the Federal Advisory Committee Act (FACA; 5 U.S.C. Chapter 10), which includes statutory meeting and transparency requirements. The Committee Management Secretariat (hereinafter “Secretariat”) of the General Services Administration (GSA) is responsible for matters relating to advisory committees subject to FACA. As part of this responsibility, GSA has issued guidance on meeting procedures (“Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37738-37740, 2001).

In the Final Rule, GSA stated

[w]hile FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement.

One of these methods is through FACA’s open and accessible meeting requirements.

This In Focus provides an overview of the type of meetings covered by FACA, frequency and notice considerations, open meeting requirements, and meeting minute preparation requirements. For more information on FACA, see CRS Report R44232, *Creating a Federal Advisory Committee in the Executive Branch*, by Meghan M. Stuessy.

Defining Meetings

While the statute itself does not specify, the Final Rule provides a definition of what types of gatherings are subject to FACA’s meeting requirements and procedures.

What Is a Committee Meeting?

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations. “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37734, July 19, 2001.

The Final Rule recognizes that not all gatherings address substantive matters that require public inspection. The Final Rule excludes the activities of two or more advisory committee members related to

- *preparatory work*: meetings 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
- *administrative work*: meetings convened “solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.” (41 C.F.R. §102-3.160)

According to GSA, FACA requires “contemporaneous access to the advisory committee deliberative process.” Critics, however, have questioned the relationship between emails and the preparatory work exception as possibly allowing agencies to conduct business without triggering FACA. To remedy this tension, in 2011, the Administrative Conference of the United States suggested a FACA revision to permit the use of a moderated web forum to be open for an extended period of time, rather than solely for the duration of the meeting, in order to capture deliberative and preparatory comments. This recommendation has not been adopted to date.

Frequency of Meetings

While FACA does not provide for a minimum or maximum number of advisory committee meetings, the statute does indicate that the estimated number and frequency of meetings must be reported when an advisory committee files its charter with GSA (5 U.S.C. §1008). A committee’s charter must define the federal advisory committee’s mission or charge, its specific duties, and general operating characteristics.

When an advisory committee is established, its statute, agency guidance, or presidential directive creating the committee may specify the number and frequency of meetings. These meeting requirements would similarly be reported in the committee’s charter. For more information on the establishment of federal advisory committees, see CRS In Focus IF12102, *Federal Advisory Committee Act (FACA): Committee Establishment and Termination*, by Meghan M. Stuessy.

Meeting Notice Requirements

The Final Rule requires advisory committee meeting notices to be published in the *Federal Register* at least 15 calendar days in advance. Such a notice is to include

- the name of the committee;
- the time, date, and place of the meeting;
- a summary of the agenda;
- a statement of whether the meeting is open to the public or will be closed pursuant to the Government in the Sunshine Act (Sunshine Act; 5 U.S.C. §552b); and
- the name of the Designated Federal Officer or other responsible agency official who may be contacted for additional information concerning the meeting.

Meetings may not take place with less than 15 days' notice unless the meeting is determined by the President to be necessary for national security reasons (5 U.S.C. §1009) or due to "exceptional circumstances," provided the reasoning is included in the *Federal Register* notice. (41 C.F.R. §102-3.150)

Open Meetings

In order for Congress and the public to be kept informed on the activities of advisory committees, FACA provides that meetings be open and available to public inspection. GSA's discussion of meeting accessibility includes the requirement that any member of the public be permitted to file a written statement with the advisory committee, and be permitted to speak or address the advisory committee in accordance with the agency's guidelines. As described above, meetings consisting of preparatory or administrative work do not have to comply with the open meeting requirements of FACA.

Closing a Meeting

FACA also permits advisory committees to close meetings in whole or in part in a manner compatible with the Sunshine Act. The Sunshine Act includes 10 exemptions that allow deliberations to be closed to the public (5 U.S.C. §552b(c)). The exemptions allow meetings that might disclose, for example, trade secrets and commercial or financial information, to take place behind closed doors. The Sunshine Act's exemptions bear many similarities to the nine exemptions of the Freedom of Information Act (FOIA; 5 U.S.C. §552).

Under the Sunshine Act, any member may request a vote on whether to close a meeting. The vote must be recorded and the results made publicly available within one day of the vote being taken (5 U.S.C. §552b(d)(2)). The act also stipulates that the meeting notice will also indicate whether the meeting is to be open or closed to the public (5 U.S.C. §552b(e)(1)). For more information about the Sunshine Act and FOIA, see CRS Report R47058, *Access to Government Information: An Overview*, by Meghan M. Stuessy.

Meeting Accessibility and Virtual Formats

The Final Rule recognizes that meetings may be held in person or virtually. GSA stipulates that virtual meetings, like those held in person, must comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §791 et seq.) and be held at a reasonable time and in "a manner or place reasonably accessible to the public." (41

C.F.R. §102-3.140) Meeting rooms are to be sufficient to accommodate committee members, staff, and a reasonable number of interested members of the public.

As part of its public accessibility tenets, the Final Rule also requires that any member of the public be permitted to file a written statement with the advisory committee. However, members of the public may address the committee only if the agency's guidelines permit it. In the event the meeting is held by teleconference or virtually, the format must also meet these same requirements. (41 C.F.R. §102-3.40(e))

Questions regarding meeting accessibility still remain. The Final Rule does not require agencies to conduct meetings in specific formats. Meetings held in person may limit participation to those who can travel to the meeting, while virtual meetings may limit meetings to the digitally literate and those with internet access and appropriate hardware or software.

Additionally, current guidance does not require meetings to be held in multiple formats, nor does it prohibit an agency from doing so. Depending on the type of software or virtual meeting method selected, participants with disabilities may be impacted differently. Though the Final Rule references Section 504 of the Rehabilitation Act of 1973, it may also be possible that Section 508, governing the accessibility of electronic and information technology, would apply. For more information on Section 508, see CRS In Focus IF12093, *The Accessibility of Federal Information and Data: A Brief Overview of Section 508 of the Rehabilitation Act*, by Natalie R. Ortiz.

Minutes Requirements

FACA requires that detailed minutes of each advisory committee meeting be kept. Under the Final Rule, minutes are to include

- the time, date, and place of the meeting;
- a list of persons who were present, including committee members and staff, agency employees, and members of the public who presented oral or written statements;
- an accurate description of each matter discussed and the resolution; and
- copies of each document received, issued or approved.

Statute requires that the accuracy of the advisory committee's minutes be certified by the committee's chair (5 U.S.C. §1009(c)). Furthermore, the agency's representative, or Designated Federal Officer, must ensure the minutes are certified within 90 calendar days of the meeting. (41 C.F.R. §102-3.165) However, the guidance does not indicate that meeting minutes must be published in advance of the committee's next meeting date.

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