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The Federal Advisory Committee Act (FACA): Overview and Considerations for Congress

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The Federal Advisory Committee Act (FACA): Overview and Considerations for Congress

Federal advisory committees are created by Congress, Presidents, and executive branch agencies to gain expertise and policy advice from individuals outside the federal government. While they may be called by other names—such as task forces, panels, commissions, working groups, boards, councils, or conferences—the practical purpose of federal advisory committees typically remains the same: to facilitate an exchange of policy ideas among experts and affected parties and to provide recommendations to the federal government. Since 1972, many federal advisory committees have been subject to the Federal Advisory Committee Act (FACA; 5 U.S.C. Chapter 10).

Generally, FACA applies to advisory committees that are either established or utilized by the President or an agency and include at least one member—such as a member of the public; business leader; or state, local, or tribal official—who is not a full-time or permanent part-time federal employee or official. The statute requires covered committees to operate in accordance with certain transparency, membership balance, and open meeting requirements.

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 a
- *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.

All federal advisory committees subject to FACA must submit a charter in order to be formally established. Charters must be filed with the advisory committee’s agency head, the agency’s Senate and House committees of jurisdiction, the General Services Administration’s (GSA’s) Committee Management Secretariat, and the Library of Congress. The charter must define the federal advisory committee’s mission or charge, its specific duties, and its general operating characteristics. In the interest of transparency, committees subject to FACA also must comply with certain meeting notice and open meeting requirements.

FACA requires that committees have a balanced membership in terms of “the points of view represented and the functions to be performed by the advisory committee.” The method for ensuring a committee’s balance varies on the basis of its establishment authority and whether it is a non-discretionary committee or discretionary committee. For non-discretionary advisory committees, the membership balance is incorporated and assessed when Congress or the President drafts the establishment authority. For discretionary committees, GSA requires the submission of a membership balance plan to ensure that the agency considers and selects from a cross-section of persons directly affected by, interested in, and qualified to participate in the functions of the advisory committee.

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Many federal advisory committees are subject to the Federal Advisory Committee Act (FACA; 5 U.S.C. Chapter 10),¹ which allows advisory committee members to offer perspectives, advice, and ideas on the implementation of federal policy. In administering FACA, the General Services Administration (GSA), via the Committee Management Secretariat (hereinafter “Secretariat”), has issued guidance in the form of a rule on advisory committee management, commonly referred to as the “Final Rule.”²

Congress began studying how to improve the administration of federal advisory committees in response to concerns that the number and membership of advisory committees had proliferated and that the committee operations were not consistent or transparent. In a 1970 report detailing their findings, the House Committee on Government Operations found that the extensive use and creation of advisory committees warranted an overall federal policy that would specify “what policy criteria, organization and administrative guidelines are needed to justify the investment of time, effort and expense in the use of advisory groups as an instrument of Government.”³ Building upon previous administrative efforts to track advisory committees, these findings led to the enactment of FACA.⁴

According to the legislation’s accompanying report from the Senate Committee on Government Operations, advisory committees were intended to provide an “opportunity for the public to learn either about [advisory committee] deliberations and recommendations or about the information on which [advisory committees] base those recommendations.”⁵ To those ends and to clarify the consultatory and impartial roles expected of advisory committees, FACA requires that such committees be

- advisory only and not binding in nature and that final determination on committee recommendations be made by federal officials,⁶

¹ The Federal Advisory Committee Act (FACA) was originally enacted in P.L. 92-463, 86 Stat. 770 (1972). In December 2022, P.L. 117-286 (136 Stat. 4197) revised Title 5 of the *U.S. Code* and moved FACA from the Appendix to Chapter 10. Older citations, therefore, may make reference to the Appendix of Title 5.

² General Services Administration (GSA), “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37728-37750, July 19, 2001.

³ U.S. Congress, House Committee on Government Operations, *The Role and Effectiveness of Federal Advisory Committees*, 91st Cong., 2nd sess., December 11, 1970, H.Rept. 91-1731, p. 2.

⁴ Executive Order 11007, “Prescribing Regulations for the Formation and Use of Advisory Committees,” 27 *Federal Register* 1875-1877, February 26, 1962.

⁵ U.S. Congress, Senate Committee on Government Operations, *The Federal Advisory Committee Act*, report to accompany S. 3529, 92nd Cong., 2nd sess., September 7, 1972, S.Rept. 92-1098 (Washington: Government Publishing Office, 1972), p. 6. The report continued: “The lack of public scrutiny of the activities of advisory committees was found to pose the danger that subjective influence not in the public interest could be exerted on the Federal decisionmakers.”

⁶ 5 U.S.C. §1002(b)(6). See also “Committee Reports and Recommendations.”

- “fairly balanced in terms of the points of view represented and the functions to be performed,”⁷ and
- open to the public and make committee records available for public inspection.⁸

This report provides an overview of the statute’s requirements and illustrative committee examples from statute, presidential directives, agency authorities, and the *Federal Register*. It presents information on GSA’s role in FACA administration and the role of agency officials in advisory committees. It also provides information on FACA’s scope, committee establishment and termination, committee member selection, meeting requirements, and treatment of committee reports and recommendations.

FACA’s Scope

Generally, FACA applies to advisory committees that are either established or utilized by the President or an agency and include at least one member—such as a member of the public; business leader; or state, local, or tribal official—who is not a full-time or permanent part-time federal employee or official.⁹ Committees “composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government” are outside of FACA’s coverage.¹⁰

For purposes of FACA, *utilized* means “when the President or a Federal office or agency exercises actual management or control over its operation.”¹¹ The Final Rule clarifies that certain committee compositions are exempt from FACA, including those that are

- not actually managed or controlled by the executive branch;¹²
- composed of groups assembled to provide individual advice or to exchange facts or information;¹³ and
- composed of federal officials or officers and elected officers of state, local, and tribal governments acting in their official capacities.¹⁴

The number of committees within a particular sponsoring agency varies greatly. At department-level entities in FY2023, for example, the Department of Health and Human Services reported 264 committees, while the Department of Housing and Urban Development reported three committees. **Figure 1** shows the number of federal advisory committees reported at the 15 department-level entities.

⁷ 5 U.S.C. §1004(b)(2). See also “Membership Balance.”

⁸ 5 U.S.C. §1009. See also “Meeting Requirements.”

⁹ 5 U.S.C. §1001(2).

¹⁰ 5 U.S.C. §1001(2)(B)(i).

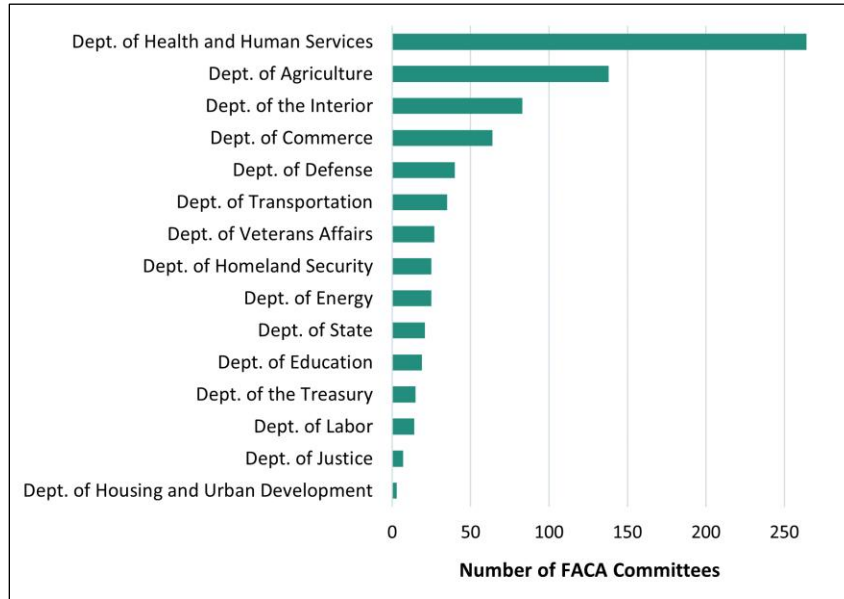
¹¹ 41 C.F.R. §102-3.25.

¹² 41 C.F.R. §102-3.40(d).

¹³ 41 C.F.R. §§102-3.40(e) and (f).

¹⁴ 41 C.F.R. §102-3.40(g). GSA explains that in order to be excluded from FACA “the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration.”

Figure I. Federal Advisory Committees at Department-Level Entities
FY2023



Source: CRS analysis of the FACA database, located at <http://www.facadatabase.gov>.

Does FACA Apply?

Whether a specific committee is subject to FACA rests on many factors and is often decided on a case-by-case basis. If the establishing statute or directive is not explicit, the agency head of the committee's sponsoring agency or the courts would likely determine whether or not FACA applies.

Congress may choose to specify whether and how FACA applies to a statutorily created committee (see **Table 1** for examples). These specifications can include a complete exemption from FACA; an exemption from certain provisions of FACA, such as a committee's expected two-year duration, open meeting requirements, or membership balance requirements; or the application of FACA to an entity that might otherwise be exempt. Explanations and examples of these options are discussed below.

Table I. Examples of Statutes Applying or Exempting a Committee from FACA

Citation	Language
42 U.S.C. §1320a–7c(a)(6)(I)	The provisions of the Federal Advisory Committee Act shall not apply to the partnership established by subparagraph (A). [<i>Partnership</i> refers to] a public-private partnership of health plans, Federal and State agencies, law enforcement agencies, health care anti-fraud organizations, and any other entity determined appropriate by the Secretary for purposes of detecting and preventing health care waste, fraud, and abuse.
7 U.S.C. §6712(f)(7)	The Advisory Council [Greenhouse Gas Technical Assistance Provider and Third-Party Verifier Program] shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.), except that section 14(a)(2) of that Act shall not apply.
16 U.S.C. §7702(d)(C)(iv)	The Advisory Committee [related to the North Pacific Fisheries Convention] shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Subcommittees

In some instances, advisory committees may also contain subcommittees. During the deliberations leading to the issuing of the Final Rule, observers commented that previous guidance was unclear on whether subcommittees reporting to a committee were subject to FACA.¹⁵

The Final Rule clarifies that FACA does not apply “to subcommittees that report to a parent advisory committee and not directly to a Federal officer or agency,” but the creation and operation of a subcommittee “must be approved by the agency establishing the parent advisory committee.”¹⁶ Even so, an agency may still choose to apply any FACA provision to a subcommittee.

Committee Establishment and Termination

A federal advisory committee may be established by the President, Congress, or an executive agency by either a presidential directive, such as an Executive Order (E.O.); statute; or agency authority, respectively. The method by which a committee is established under FACA also provides for how the committee may be terminated. In addition, after being established and before meeting, the agency must file a charter with GSA.¹⁷

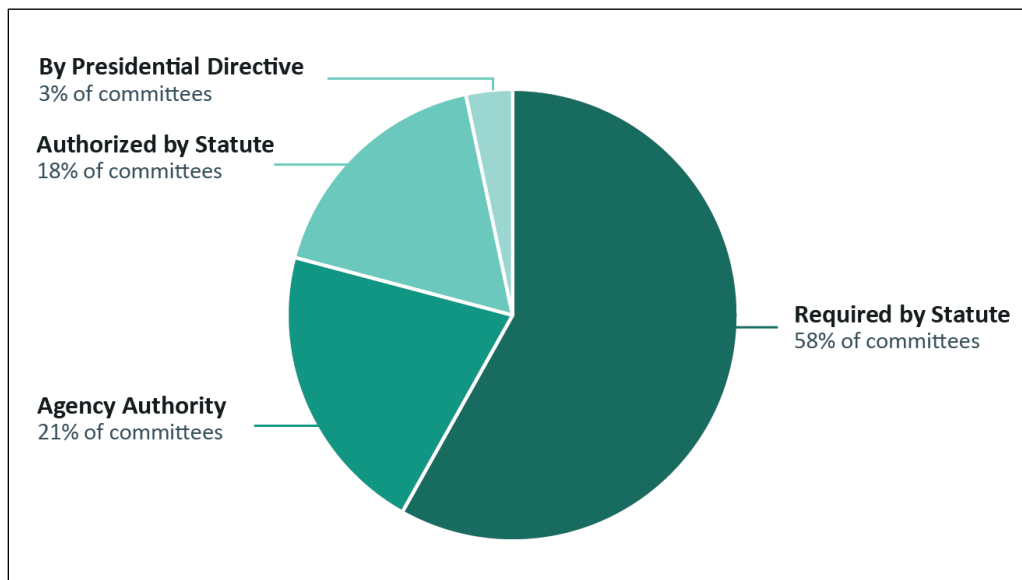
Figure 2 displays the methods by which FY2023 FACA committees were established. Of the 1,021 total committees reported in FY2023, a majority were required by statute (58%), while the fewest were required by presidential directive (3%).

¹⁵ GSA, “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37728-37729, July 19, 2001.

¹⁶ 41 C.F.R. §102-3.35.

¹⁷ 41 C.F.R. §102-3.70. Typically, the Committee Management Officer (CMO) is responsible for filing the committee’s charter with GSA; however, the agency head may designate another agency official instead. CMOs are discussed later in this report in the “Agency Roles” section.

Figure 2. Federal Advisory Committee Establishment Methods
FY2023



Source: CRS analysis of the FACA database, located at <http://www.facadatabase.gov>.

Establishment

Committees may be established under FACA by one of four methods, which are further categorized as either “non-discretionary” or “discretionary” committees (see **Table 2** for examples).

A non-discretionary advisory committee is either a

- *presidential advisory committee* mandated by presidential directive or a
- *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.

Discretionary committees face more procedural hurdles in the chartering process than non-discretionary committees do.¹⁸ 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) why the committee’s functions cannot be performed by the agency, another existing committee, or other means, such as a public hearing.¹⁹

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

¹⁸ The chartering process is discussed further in the “Chartering Requirements” section.

¹⁹ 41 C.F.R. §102-3.60.

Table 2. Examples of Statutes and Directives Establishing a Committee

Citation	Language
47 U.S.C. §906(a)(F)	The Secretary [of the Treasury], acting through the NTIA [National Telecommunications and Information Administration] Administrator, and in consultation with the Under Secretary of Commerce for Standards and Technology, shall establish a Federal advisory committee, in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), composed of government and private sector experts, to advise the Secretary and the NTIA Administrator on the administration of the Innovation Fund.
87 <i>Federal Register</i> 43383	Department of Transportation, Notice to Establish the Transforming Transportation Advisory Committee (TTAC), “This notice announces the establishment of the DOT TTAC as a Federal Advisory Committee in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2) to provide information, advice, and recommendations to the Secretary on matters relating to transportation innovation.”
Executive Order 12310	President’s Commission on Housing (Ronald Reagan), “By the authority vested in me as President of the United States, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), a Presidential advisory committee on national housing policies and Federal programs in furtherance thereof, it is hereby ordered as follows: Section I. Establishment. (a) There is established the President’s Commission on Housing. The Commission shall be composed of not more than twenty-two (22) members from private life and from State and local governments who shall be appointed by the President.”

Source: CRS analysis of the *U.S. Code* and *Federal Register*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute, agency, or executive directives.

Chartering Requirements

All federal advisory committees subject to FACA must submit a charter in order to be formally established. Charters 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.²⁰ The charter must define the federal advisory committee’s mission or charge, its specific duties, and its general operating characteristics. A committee cannot meet or take action without filing a charter, which must be refiled every two years.²¹

Creating a Committee by Legislation

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

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 the committee will perform;
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

²⁰ 5 U.S.C. §1008(c) and 41 C.F.R. §102-3.75.

²¹ 5 U.S.C. §§1008(c)(1) and 1013(b)(2).

5. provisions to assure that the advisory committee will have adequate staff and funds, which may be supplied by an agency.²²

Such factors are also reflected in FACA’s chartering information requirements.

Termination

All advisory committees subject to FACA must renew their charters with GSA every two years or cease operations (see **Table 3**). Discretionary and non-discretionary advisory committee charters may differ in descriptions of a committee’s expected duration.²³

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. 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 E.O. 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 termination requirement in its establishing statute, however, may exist indefinitely and be terminated only by additional legislation. 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 (ACUS) 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.”²⁴

Table 3. Examples of Statutes and Directives Terminating a Committee

Citation	Language
5 U.S.C. §315(g)	The Advisory Committee [on Data for Evidence Building] shall terminate not later than two years after the date of the first meeting.
15 U.S.C. §8814	The [National Quantum Initiative] Advisory Committee shall be exempt from section 14 of the Federal Advisory Committee Act (5 U.S.C. App.)
Executive Order 12382	President’s National Security Telecommunications Advisory Committee (Ronald Reagan), “In accordance with the Federal Advisory Committee Act, as amended, the Committee shall terminate on December 31, 1982, unless sooner extended.”

Source: CRS analysis of the *U.S. Code* and *Federal Register*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute, agency, or executive directives.

²² 5 U.S.C. §1004(b).

²³ 5 U.S.C. §1013.

²⁴ Administrative Conference of the United States (ACUS), *Administrative Conference Recommendation 2011-7, The Federal Advisory Committee Act – Issues and Proposed Reforms*, December 9, 2011, p. 10, at <https://www.acus.gov/sites/default/files/documents/Recommendation-2011-7-Federal-Advisory-Committee-Act.pdf>. ACUS is an independent agency established in 5 U.S.C. §§591-596 to study federal administrative procedures and develop recommendations for improvement.

Efforts to Reduce the Number of Committees

Congress and other establishing entities are encouraged by both FACA's statutory language and implementing guidance to consider whether or not a new committee's purposes would be duplicative of existing efforts. For example, FACA requires each standing committee of the Senate and House of Representatives, when considering legislation establishing or authorizing any advisory committee, to determine if "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."²⁵

In addition, two 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.

E.O. 12838 required that one-third of discretionary advisory committees subject to FACA be terminated by the end of FY1993.²⁶ The order also created a requirement 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 ceilings on the number of advisory committees for each agency.²⁷ These limits do not affect non-discretionary committees. Further, 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.

In 1997, the Government Accountability Office (GAO) studied E.O. 12838's effectiveness on committee efficiency. GAO found that the overall number of federal advisory committees had declined by one-third since 1993.²⁸ 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.

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, 2019.²⁹ 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. 13875.³⁰

²⁵ 5 U.S.C. §1004(b).

²⁶ Executive Order 12838, "Termination and Limitation of Federal Advisory Committees," 58 *Federal Register* 28, February 10, 1993.

²⁷ Office of Management and Budget (OMB), *Circular No. A-135: Management of Federal Advisory Committees*, Washington, DC, October 5, 1994, at <https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-A-135.pdf>.

²⁸ Government Accountability Office (GAO), *Federal Advisory Committee Act: Overview of Advisory Committees Since 1993*, T-GGD-98-24, November 5, 1997, p. 1, at <https://www.gao.gov/assets/t-ggd-98-24.pdf>.

²⁹ Executive Order 13875, "Evaluating and Improving the Utility of Federal Advisory Committees," 84 *Federal Register* 28711, June 14, 2019.

³⁰ Executive Order 13992, "Revocation of Certain Executive Orders Concerning Federal Regulation," 86 *Federal Register* 7049, January 20, 2021.

Committee Management Secretariat and Resources

GSA's Secretariat is responsible for "all matters relating to advisory committees" subject to FACA.³¹ In addition to issuing the Final Rule, the Secretariat is responsible for providing training for agency officials who administer FACA,³² consultations to ensure committee compliance with FACA, and other advice and guidance on the establishment and management of federal advisory committees.³³ The 2001 Final Rule remains the current overall guidance for the administration of FACA.

The FACA statute also directs the Secretariat to conduct a comprehensive review of each advisory committee to determine whether the committee continues to carry out its purpose, whether it should be merged with other committees or abolished, and whether the committee's assigned responsibilities should be revised.³⁴ To assist in carrying out this directive, the Secretariat created the FACA database (located at www.facadatabase.gov), which contains information on the establishment, members, meetings, and activities of advisory committees subject to FACA.

While the information in the FACA database is managed by the Secretariat, the agencies self-report information about FACA committees. The Secretariat notes that "[a]lthough centrally supported by the General Services Administration's Committee Management Secretariat, the database represents a true 'shared system' wherein each participating agency and individual committee manager has responsibility for providing accurate and timely information that may be used to assure that the system's wide array of users has access to data required by FACA."³⁵ Information on committees, therefore, may vary on the basis of agency requirements.

Agency Roles

Generally, three agency officials oversee advisory committee administration: the agency head, the committee management officer (CMO), and the designated federal officer (DFO).³⁶ In some cases, administration of an advisory committee may involve additional staff or the committee's members, although FACA does not assign any specific responsibilities to members or staff.³⁷

Agency Head

FACA requires each agency head to "establish uniform administrative guidelines and management controls for advisory committees established by that agency," which are consistent

³¹ 5 U.S.C. §1006(a). Originally, the Secretariat was established within OMB by P.L. 92-463; however, Executive Order 12024 transferred these functions to GSA in December 1977.

³² GSA, *GSA Portal FACA Training Registration*, at <https://www.gsa.gov/about-us/events-and-training/gsa-training-programs/training-for-federal-employees/gsa-portal-faca-training-registration>.

³³ GSA, *Federal Advisory Committee Act (FACA) Management Overview*, at <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management>.

³⁴ 5 U.S.C. §1006(b). Originally, FACA required the President under Section 6(c) to submit an annual report to Congress on "the activities, status, and changes in composition of advisory committees in existence during the preceding calendar year." See 86 Stat. 772. The President's annual reports from 1972 to 1998 may be retrieved at <https://www.facadatabase.gov/FACA/s/1972-1998-the-annual-reports>.

³⁵ GSA, *Welcome to the GSA Federal Advisory Committee Act (FACA) Database*, at <https://www.facadatabase.gov/FACA/s/>.

³⁶ In the case of independent presidential advisory committees, the committee chair may conduct certain functions otherwise provided by agency officials, as discussed further in the "Committee Chairs" section. Contact information for agency CMOs and committee designated federal officers is listed in the FACA database.

³⁷ 41 C.F.R. §102-3.125.

with Secretariat guidance.³⁸ This includes determining the rates of compensation for committee members, if applicable, and staff; developing procedures to ensure that the advice or recommendations of the committee are the result of the committee's independent judgment; and ensuring that committee members' interests and affiliations conform with applicable conflict-of-interest statutes, regulations issued by the Office of Government Ethics (OGE), and supplemental agency ethics requirements.³⁹ Agency heads are also to review the need to continue existing advisory committees within the agency.⁴⁰

Agency heads are also responsible for ensuring that members of the public have reasonable opportunities to participate in public advisory committee activities and for providing a written determination stating the reasons for closing any advisory committee meeting to the public, per the requirements of the Government in the Sunshine Act (Sunshine Act; 5 U.S.C. §552b).⁴¹

The Final Rule also requires agency heads to designate a CMO for the agency and DFOs for committees and subcommittees.⁴² Agency heads are also permitted to delegate these responsibilities to the CMO.⁴³

Committee Management Officer

The CMO is responsible for carrying out the duties outlined in Section 1007(b) of FACA, which include (1) exercising “control and supervision over the establishment, procedures, and accomplishments of advisory committees established by the agency” and (2) assembling, maintaining, and making available the reports, records, and other papers of agency advisory committees.

In addition, the Final Rule requires the CMO to maintain agency committee records, including a set of filed charters and membership lists for each advisory committee, agency information required to be included as part of GSA's annual advisory committee review, agency guidelines for committee management operations and procedures, and closed meeting determinations.⁴⁴

Designated Federal Officer

The DFO is required to chair or attend each meeting of each advisory committee. Similarly, statute requires the DFO to call and approve committee meetings and agendas and to adjourn committee meetings.⁴⁵ FACA prohibits advisory committees from conducting any meeting in the absence of the DFO.⁴⁶

³⁸ 5 U.S.C. §1007(a).

³⁹ 41 C.F.R. §102-3.105(f), (g), and (h). For more information on membership and ethics considerations, see also CRS In Focus IF12512, *Federal Advisory Committee Act (FACA): Membership*, by Meghan M. Stuessy and Jacob R. Straus.

⁴⁰ 41 C.F.R. §102-3.105(e).

⁴¹ 41 C.F.R. §102-3.105(d) and (j).

⁴² 41 C.F.R. §102-3.105(c) and (i).

⁴³ GSA, “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37740, July 19, 2001. See key point I under Appendix A to Subpart B.

⁴⁴ 41 C.F.R. §102-3.115.

⁴⁵ 5 U.S.C. §1009(e) and (f) and 41 C.F.R. §102-3.120.

⁴⁶ 5 U.S.C. §1009(e).

Agency Funding

With regard to committee funding and administration, FACA stipulates that “[e]ach agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise.”⁴⁷ If an agency creates a discretionary committee or the establishing statute or directive is silent on additional appropriations, therefore, the sponsoring agency remains responsible for appointing a DFO, providing meeting space, and assisting with *Federal Register* requirements, among other support services.

Members

Agency guidance and statute may contemplate a variety of membership combinations in the context of soliciting appropriate input on a particular policy area. Decisions on who will comprise an advisory committee’s membership may be determined through an agency nomination process or specified in the committee’s establishing directive. This section discusses examples for the appointment of committee members, including creating an agency nomination process, determining a balance of members with a variety of viewpoints, categorizing committee members and ethics considerations, determining compensation for committee members, and selecting the size of the committee.⁴⁸

Nomination Process and Appointments

FACA does not specify the manner in which committee members must be appointed. Statute, agency guidance, or E.O. language, however, may stipulate who appoints members, how committee membership might be identified, and if an agency should create a nomination process for a particular advisory committee.⁴⁹ For committees without explicit direction, the appointment process is often described in the membership balance plan. Absent these requirements, each agency head may specify an agency’s own nomination policy and procedure.⁵⁰

For example, certain agencies solicit nominations through a notice published in the *Federal Register* (see **Table 4** for examples); however, FACA does not require a particular process. Relatedly, GSA notes that Members of Congress, agency officials, the general public, professional societies, or current and former committee members may nominate candidates for membership on a committee.⁵¹

⁴⁷ 5 U.S.C. §1011(b).

⁴⁸ Jacob R. Straus, Specialist on the Congress, contributed to this section of the report.

⁴⁹ GSA, “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37743, July 19, 2001. See key point I under Appendix A to Subpart C.

⁵⁰ See also GAO, *EPA Advisory Committees: Improvements Needed for the Member Appointment Process*, 19-280, July 2019, at <https://www.gao.gov/assets/gao-19-280.pdf>.

⁵¹ GSA, *The Federal Advisory Committee Act (FACA) Brochure*, Washington, DC, at <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/faca-brochure>.

Table 4. Examples of Federal Register Nomination Solicitations

Citation	Language
88 <i>Federal Register</i> 53451	Solicitation of Nominations for Members of the Grain Inspection Advisory Committee. “The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is seeking nominations for individuals to serve on the Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services it delivers pursuant to the U.S. Grain Standards Act (USGSA) and in accordance with the Federal Advisory Committee Act (FACA), as amended.”
88 <i>Federal Register</i> 87400	Intent To Reestablish the Black Hills National Forest Advisory Board and Solicitation of Nominations for Membership for the Black Hills National Forest Advisory Board. “The Black Hills National Forest Advisory Board will be governed by the provisions of FACA. Duration of the Black Hills National Forest Advisory Board is for two years unless renewed by the Secretary, USDA. This notice also solicits nominations for membership on the Black Hills National Forest Advisory Board.”

Source: CRS analysis of the *Federal Register*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in the *Federal Register*.

Appointing Official

The Final Rule explains that agency heads “retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.”⁵² In certain cases, the appointing official may be the President, or the agency head may have delegated this responsibility to another agency official, such as the CMO (see **Table 5** for examples of appointing officials).

Table 5. Examples of Different Appointing Officials in Statute

Citation	Language
10 U.S.C. §7223	The Secretary of the Army shall appoint an advisory committee on Arlington National Cemetery.
4 U.S.C. §7385s-16(a)(2)	The President shall make appointments to the Board [The Advisory Board on Toxic Substances and Worker Health] in consultation with organizations with expertise on worker health issues in order to ensure that the membership of the Board reflects a proper balance of perspectives from the scientific, medical, and claimant communities.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Committee Chairs

While FACA itself does not specify how committee chairs are to be selected, the committee’s authorizing statute or directive may provide instruction (see **Table 6** for examples). FACA requires that “the chairman of the advisory committee” certifies the accuracy of meeting minutes; however, the responsibilities for chairs of committees within agencies and for independent

⁵² GSA, “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37743, July 19, 2001. See key point II under Appendix A to Subpart C. The Final Rule also notes that “the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency.”

Presidential advisory committees differ.⁵³ For committees within agencies, the agency head, CMO, and DFO provide the committee with administrative support and direction, and a committee chair is optional.

In the case of an independent presidential advisory committee, the committee chair is responsible for many administrative tasks assigned to an agency head and is necessary for the committee to function.⁵⁴ These include ensuring overall compliance with FACA, ensuring meetings are held at a reasonable time and in a manner to facilitate public input,⁵⁵ and certifying meeting minutes.⁵⁶

Table 6. Examples of Chair Designations in Statute

Citation	Language
4 U.S.C. §7385s-16(a)(3)	The President shall designate a Chair of the Board [Advisory Board on Toxic Substances and Worker Health] from among its members.
42 U.S.C. §7709(b)	The Director [of the U.S. Geological Survey] shall establish procedures for selection of individuals not employed by the Federal Government who are qualified in the seismic sciences and other appropriate fields and may, pursuant to such procedures, select up to 10 individuals, one of whom shall be designated Chairman, to serve on the Advisory Committee [The Scientific Earthquake Studies Advisory Committee]. Selection of individuals for the Advisory Committee shall be based solely on established records of distinguished service, and the Director shall ensure that a reasonable cross-section of views and expertise is represented. In selecting individuals to serve on the Advisory Committee, the Director shall seek and give due consideration to recommendations from the National Academy of Sciences, professional societies, and other appropriate organizations.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Terms and Vacancies

Advisory committee member terms frequently align with FACA’s two-year chartering requirements (see **Table 7** for examples). However, particular committee terms vary. For example, members can be appointed on a staggered schedule to ensure that there are always a few continuing committee members serving at any given time—allowing for greater continuity in operations. Other establishing statutes or directives specify that vacancies are to be filled in the manner in which the original appointment was made. Additional details on term length and vacancies may depend on the policy area the committee is studying or the sponsoring agency’s interest in the committee’s work.

⁵³ 5 U.S.C. §1009(c). See also 41 C.F.R. §102-3.165(c), which requires the DFO to ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

⁵⁴ 41 C.F.R. §102-3.110.

⁵⁵ 41 C.F.R. §102-3.140.

⁵⁶ 41 C.F.R. §102-3.165.

Table 7. Examples of Term and Vacancy Specifications

Citation	Language
5 U.S.C. §315(c)	<p>Term of Service</p> <p>(1) In general. Each member of the Advisory Committee [on Data for Evidence Building] shall serve for a term of 2 years.</p> <p>(2) Vacancy. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.</p>
38 U.S.C. §545(a)(4)	<p>The Secretary shall determine the terms of service and pay and allowances of the members of the Committee [Advisory Committee on the Readjustment of Veterans], except that a term of service may not exceed two years. The Secretary may reappoint any member for additional terms of service.</p>

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Membership Balance

FACA requires that committees have a balanced membership.⁵⁷ The method for ensuring a committee’s balance varies on the basis of its establishment authority and whether it is a non-discretionary committee (i.e., those mandated by presidential directive or statute) or discretionary committee (i.e., those authorized by law or established under agency authority).

Membership Balance Requirement

5 U.S.C. §1004(b)(2)

FACA requires that the membership of an advisory committee “be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.”

For non-discretionary advisory committees, the membership balance is incorporated and assessed when Congress or the President drafts the establishment authority. Similarly, the establishment authority could require membership diversity in education, geography, professional expertise, or interests to be represented on the committee. For discretionary advisory committees, the Final Rule requires agencies to submit a membership balance plan when establishing or renewing an advisory committee.⁵⁸

Membership Balance Plan

GSA notes that while the membership balance plan requirement applies only to discretionary committees, it recommends this process to non-discretionary committees as a good practice.⁵⁹ The plan is to “ensure that, in the selection of members for the advisory committee, the agency

⁵⁷ 5 U.S.C. §1004(b)(2).

⁵⁸ 41 C.F.R. §102-3.60(a).

⁵⁹ GSA, *Federal Advisory Committee Membership Balance Plan*, November 2011, p. 1, at https://www.gsa.gov/system/files/MembershipBalancePlanGuidance-November_2011.pdf.

will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee.”⁶⁰ (See **Table 8** for examples.)

In 2011 supplementary guidance, GSA directs agencies to include nine elements in their membership balance plans.⁶¹ Among other balance factors, such as the geographic location of candidates, the importance of including members from other levels of government, and diversity in work sector, a plan must also consider the candidate identification process and points of view to be represented.

Candidate Identification Process

A committee’s membership balance plan must summarize the agency’s process to identify candidates for committee membership, resources the agency is to use to identify candidates (such as recommendations from current and former members of the committee, publication of nomination notices in the *Federal Register*, and searches of relevant professional organizations), and key agency officeholders who are to evaluate the committee for balance.⁶²

Points of View

GSA directs agencies to describe its process for ascertaining balance among an advisory committee’s membership by identifying categories (such as individual expertise or represented interests) from which candidates for membership will be considered. In addition, the plan may identify the anticipated distribution of membership across these categories and should discuss whether members will be appointed as special government employees (SGEs) or representative members.

Table 8. Examples of Statutory Language Concerning Membership Specification

Citation	Language
16 U.S.C. §430g-8(a)	<p>There is hereby established the Gettysburg National Military Park Advisory Commission (hereafter in sections 430g–8 to 430g–10 of this title referred to as the “Advisory Commission”). The Advisory Commission shall be composed of eleven members, as follows:</p> <ol style="list-style-type: none"> (1) One member representing each of the local governments from the four townships surrounding the park and the Borough of Gettysburg, appointed by the Secretary. (2) One member representing the Adams County, Pennsylvania government, appointed by the Secretary. (3) One member representing the State Historic Preservation Office of the State of Pennsylvania, appointed by the Secretary. (4) Two members who are residents of Adams County and who are knowledgeable about the park and its resources, appointed by the Secretary, one of whom shall own land or interests in land within the park boundary. (5) One member with expertise in local historic preservation, appointed by the Secretary. (6) The Director of the National Park Service or his designee, ex officio.

⁶⁰ 41 C.F.R. §102-3.60(b)(3).

⁶¹ GSA, *Federal Advisory Committee Membership Balance Plan*, November 2011, pp. 2-4, at https://www.gsa.gov/system/files/MembershipBalancePlanGuidance-November_2011.pdf.

⁶² GSA, *Federal Advisory Committee Membership Balance Plan*, November 2011, pp. 3-4, at https://www.gsa.gov/system/files/MembershipBalancePlanGuidance-November_2011.pdf.

Citation	Language
42 U.S.C. §300aa-19(a)	<p>There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:</p> <p>(1) Nine members appointed by the Secretary as follows:</p> <p>(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.</p> <p>(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.</p> <p>(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.</p> <p>(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.</p>

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Types of Members

FACA committee members may have different expertise or interactions with the federal government. Therefore, individuals may be appointed in one of three categories: ex officio, SGE, and representative. These different types of members may have different ethical requirements. Executive branch ethics requirements are established by the Ethics in Government Act (EIGA), and regulations are set by OGE.⁶³ Executive branch ethics requirements, including those for FACA committees, are implemented at the agency level.

Ex Officio

An ex officio member holds membership on an advisory committee by virtue of his or her federal office and serves only while an incumbent of such a position. For example, if an advisory committee's establishing statute or directive requires an agency deputy or assistant secretary to be a member of a particular advisory committee, they would serve in an ex officio capacity. If the individual were to leave that position, then they would no longer serve on the advisory committee.

Special Government Employees

An SGE member is a category of federal employment reserved for an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 days.⁶⁴ Unlike representatives who, as discussed more below, may be selected to represent a particular point of view, SGEs are

⁶³ 5 U.S.C. §§13101-13111; 5 C.F.R. Part 2634. For more information, see CRS Report R47320, *Financial Disclosure in the U.S. Government: Frequently Asked Questions*, by Jacob R. Straus.

⁶⁴ 18 U.S.C. §202.

expected to exercise their own best judgment on behalf of the government and are expected to discuss and deliberate in a manner that is free from conflicts of interest.

Representatives

A representative member is not a government employee. The appointing authority could designate a committee member as a representative if the member is expected to provide the point of view of a nongovernmental entity or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups). Generally, it is expected that representatives will represent a particular bias.⁶⁵ Subsequently, “agencies do not conduct conflict-of-interest reviews for members appointed as representatives” because only regular and special government employees are subject to the conflict-of-interest statutes.⁶⁶

Membership Designation and Ethics Responsibilities

If the relevant legislation or other establishment authority does not clearly identify how a committee’s members should be designated, agency officials are generally expected to determine each member’s status. OGE provides legal advisories on what factors agency officials should use to determine a member’s designation. These include whether the member is to be paid and if the member is speaking on behalf of the federal government.⁶⁷

Depending on employment classification, FACA committee members may be subject to the EIGA. For example, SGEs who serve as committee members are required to file financial disclosure statements with their agency and to negotiate conflict-of-interest remediation, if necessary. SGEs, however, are not generally subject to outside employment and income restrictions that apply to regular government employees.⁶⁸ Representative members, since they are not government employees, are not subject to EIGA requirements.

Number of Members

An advisory committees’ size might affect its operations. For example, one operational consideration may be that the committee be small enough to allow all members a chance to communicate their expertise and opinions, and another may be that the committee be large enough to include the appropriate stakeholders. In FY2020, of the 896 committees reviewed by CRS, the median number of members for a FACA advisory committees was 16.⁶⁹ Some committees have many more or fewer members than this median, depending on the scope and duties of the committee.

⁶⁵ Office of Government Ethics (OGE), *Letter to the Chairman of a National Commission Dated June 24, 1993*, Memorandum 93 x 14, p. 1, at [https://www.oge.gov/web/oge.nsf/News+Releases/5AAC736DDAB405D4852585BA005BEE8E/\\$FILE/316d5bbc44074959b2638083326b850d2.pdf](https://www.oge.gov/web/oge.nsf/News+Releases/5AAC736DDAB405D4852585BA005BEE8E/$FILE/316d5bbc44074959b2638083326b850d2.pdf).

⁶⁶ 5 U.S.C. §2105. See also GAO, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, April 2004, p. 18, at <https://www.gao.gov/assets/gao-04-328.pdf>.

⁶⁷ OGE, Memorandum Dated July 9, 1982 from J. Jackson Walter Director of the Office of Government Ethics to Heads of Departments and Agencies of the Executive Branch Regarding Members of Federal Advisory Committees and the Conflict-of-Interest Statutes, Memorandum 82 x 22, at [https://www.oge.gov/web/oge.nsf/0/A8A528CD14CDCEB0852585BA005BEF88/\\$FILE/39cf3009de3340b9a96158c14f88b8ae3.pdf](https://www.oge.gov/web/oge.nsf/0/A8A528CD14CDCEB0852585BA005BEF88/$FILE/39cf3009de3340b9a96158c14f88b8ae3.pdf).

⁶⁸ 5 C.F.R. §2636.

⁶⁹ CRS analysis of information reported in the FACA database, located at <https://www.facadatabase.gov/FACA/s/>.

Compensation and Staff

FACA does not require that committee members be compensated. The statute, however, permits agencies to compensate members, including salaries, reimbursement of travel expenses, and per diems in lieu of subsistence.⁷⁰ In implementing FACA, the GSA Administrator, in consultation with the Director of the Office of Personnel Management, is to establish uniform fair rates of pay for committee members, staff, and consultants (see **Table 9** for examples).⁷¹ Generally, rates of pay for committee members and staff may not exceed the rate for Level IV of the Executive Schedule.⁷²

Table 9. Examples of Statutory Language Concerning Compensation

Citation	Language
42 U.S.C. §2039	The members of the Committee [Advisory Committee on Reactor Safeguards] shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee.
34 U.S.C. §11116(f)	Members appointed under subsection (a)(2) shall serve without compensation. Members of the Council [Coordinating Council on Juvenile Justice and Delinquency Prevention] shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out the duties of the Council.
33 U.S.C. §1128(c)(5)	Voting members of the Board [National Sea Grant Advisory Board] shall- (A) receive compensation at a rate established by the Secretary, not to exceed the maximum daily rate payable under section 5376 of title 5, when actually engaged in the performance of duties for such Board; and (B) be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Meeting Requirements

In the Final Rule, GSA stated, “While 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.”⁷³ One of these accountability methods is through FACA’s open and accessible meeting requirements. This section provides information on what constitutes a meeting under FACA, including options for quorum and meeting frequency; FACA’s meeting notice requirements; and the statute’s open meeting requirements and closed meeting procedures.

⁷⁰ 5 U.S.C. §1006.

⁷¹ 5 U.S.C. §1006(d).

⁷² 41 C.F.R. §§102-3.130(d) and (e). The rate of pay for Level IV of the Executive Schedule is \$191,900 for 2024. For more information, see Office of Personnel Management, *Salary Table No. 2024-EX, Rates of Basic Pay for the Executive Schedule (EX)*, at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/EX.pdf>.

⁷³ GSA, “Federal Advisory Committee Management; Final Rule,” 66 *Federal Register* 37730, July 19, 2001.

Defining Meetings

The Final Rule defines what types of gatherings are subject to FACA's meeting requirements and procedures. According to the Final Rule, "*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."⁷⁴

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

- *preparatory work*, which refers to 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*, which refers to meetings convened "solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency."⁷⁵

According to GSA, FACA requires "contemporaneous access to the advisory committee deliberative process." Critics have questioned the relationship between emails and the preparatory work exception as possibly allowing agencies to conduct business without triggering FACA.⁷⁶ To remedy this tension, in 2011, ACUS suggested a FACA revision to permit a moderated web forum to be open for a period of time, rather than solely for the duration of the meeting, in order to capture deliberative and preparatory comments.⁷⁷ GSA has not incorporated this recommendation into the Final Rule.

Quorum

Generally, a quorum is a minimum number of members required to be in attendance at a committee meeting before the members can conduct committee business. Neither FACA's statutory text nor the Final Rule require an advisory committee to specify a quorum (see **Table 10**). However, quorums may be provided in a committee's establishing statute or directive or may be considered as part of the sponsoring agency's regulations.

⁷⁴ 41 C.F.R. §102-3.25.

⁷⁵ 41 C.F.R. §102-3.160.

⁷⁶ GSA, "Federal Advisory Committee Management, Final Rule," 66 *Federal Register* 37729, July 19, 2001.

⁷⁷ ACUS, *Administrative Conference Recommendation 2011-7, The Federal Advisory Committee Act – Issues and Proposed Reforms*, December 9, 2011, p. 11, at <https://www.acus.gov/sites/default/files/documents/Recommendation-2011-7-Federal-Advisory-Committee-Act.pdf>.

Table 10. Examples of Statutory Language Concerning Quorums

Citation	Language
7 U.S.C. §6518(h)	A majority of the members of the [National Organic Standards] Board shall constitute a quorum for the purpose of conducting business.
19 U.S.C. §2605(d)	Six of the members of the [Cultural Property Advisory] Committee shall constitute a quorum. All decisions of the Committee shall be by majority vote of the members present and voting.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Frequency of Meetings

FACA does not provide for a minimum or maximum number of advisory committee meetings (see **Table 11**). It requires the estimated number and frequency of meetings to be reported when an advisory committee files its charter with GSA.⁷⁸ A committee’s charter must define the federal advisory committee’s mission or charge, its specific duties, and its general operating characteristics.

When an advisory committee is established, the statute, agency guidance, or presidential directive creating the committee may specify the number and frequency of meetings. These meeting requirements would also be reported in the committee’s charter.

Table 11. Examples of Statutory Language Concerning Meeting Frequency

Citation	Language
5 U.S.C. §5347(f)	The [Federal Prevailing Rate Advisory] Committee shall meet at the call of the Chairman. However, a special meeting shall be called by the Chairman if 5 members make a written request to the Chairman to call a special meeting to consider matters within the purview of the Committee.
29 U.S.C. §1142(b)	The Council [Advisory Council on Employee Welfare and Pension Benefit Plans] shall meet at least four times each year and at such other times as the Secretary requests.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

Meeting Notice Requirements

The Final Rule requires all advisory committee meeting notices to be published at least 15 calendar days in advance in the *Federal Register*. These notices are 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 will be open to the public or closed, pursuant to the Sunshine Act; and

⁷⁸ 5 U.S.C. §1008(c)(2)(H).

- the name of the DFO 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 President determines the meeting to be necessary for national security reasons or because of exceptional circumstances, provided the reasoning is published in the *Federal Register* prior to the meeting.⁷⁹

Minutes Requirements

FACA requires that detailed minutes of each advisory committee meeting be kept.⁸⁰ 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.⁸¹

Statute requires that the accuracy of the advisory committee's minutes be certified by the committee's chair.⁸² Furthermore, the DFO must ensure that the minutes are certified within 90 calendar days of the meeting.⁸³ The guidance does not indicate that meeting minutes must be published in advance of the committee's next meeting date. A 2020 GAO report found that some FACA committees did not comply with the statute's minutes requirements, raising questions about whether committees consistently comply with FACA's transparency provisions.⁸⁴

Open Meetings

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 (see **Table 12**). GSA's discussion of meeting accessibility includes that any member of the public be permitted to file a written statement with the advisory committee and 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.⁸⁵ Similar to the exemptions contained in the Freedom of Information Act (FOIA; 5 U.S.C. §552), the Sunshine Act's exemptions allow meetings that

⁷⁹ 5 U.S.C. §1009; see also 41 C.F.R. §102-3.150.

⁸⁰ 5 U.S.C. §1009(c).

⁸¹ 41 C.F.R. §102-3.165.

⁸² 5 U.S.C. §1009(c).

⁸³ 41 C.F.R. §102-3.165(c).

⁸⁴ GAO, *Federal Advisory Committees: Actions Needed to Enhance Decision-Making Transparency and Cost Data Accuracy*, GAO-20-575, September 2020, pp. 16-20, at <https://www.gao.gov/assets/gao-20-575.pdf>.

⁸⁵ 5 U.S.C. §552b(c). For more information about the Sunshine Act, see CRS Report R47058, *Access to Government Information: An Overview*, by Meghan M. Stuessy.

might disclose, for example, trade secrets and commercial or financial information, to take place behind closed doors.

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.⁸⁶ The act also stipulates that the meeting notice indicate whether the meeting is to be open or closed to the public.⁸⁷

Table 12. Examples of Federal Register Meeting Notices

Citation	Language
88 <i>Federal Register</i> 76193	Department of Defense (DoD), Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting. “The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place. DATES: DACOWITS will hold an open to the public meeting—Tuesday, December 5, 2023, from 8:00 a.m. to 3:00 p.m. (EST).”
89 <i>Federal Register</i> 3675	National Institutes of Health, Center for Scientific Review; Notice of Closed Meeting. “The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”

Source: CRS analysis of the *Federal Register*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in the *Federal Register*.

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, and be held at a reasonable time and in “a manner or place reasonably accessible to the public.”⁸⁸ When held in person, 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. Members of the public may address the committee if the agency’s guidelines permit it. If the meeting is held by teleconference or virtually, the format must also meet these same requirements.⁸⁹

Questions still remain regarding meeting accessibility. The Final Rule does not require agencies to conduct meetings in specific formats. However, participation in meetings held in person may be limited to individuals who can travel to the meeting, while virtual meetings may be limited to those who are digitally literate and those who have internet access and appropriate hardware.

⁸⁶ 5 U.S.C. §552b(d)(3).

⁸⁷ 5 U.S.C. §552b(e)(1).

⁸⁸ 29 U.S.C. §791 et. seq., 41 C.F.R. §102-3.140.

⁸⁹ 41 C.F.R. §102-3.40(e).

Additionally, current guidance does not require meetings to be hybrid (i.e., with in-person and virtual options for participants), though this guidance does not prohibit an agency from doing so. Even with virtual options, decisions on specific virtual meeting technologies (e.g., teleconferencing software) and procedures can affect participants and people with particular accessibility needs differently. Though the Final Rule references Section 504 of the Rehabilitation Act of 1973, Section 508, governing the accessibility of electronic and information technology, may also apply.⁹⁰

Committee Reports and Recommendations

Many advisory committees are required to generate a report or recommendations to the agency head, Congress, or the President (see **Table 13** for examples). Some committees may also be required to make interim or annual reports. FACA itself does not require the creation of a committee report but rather discusses how committees can provide their advice and recommendations to the federal government.⁹¹ The establishing statute or directive may articulate an advisory committee's reporting requirements. If an advisory committee does create a report, FACA requires that the reports be deposited with the Library of Congress to make them available for public inspection and use.⁹²

Because a federal advisory committee's recommendations are strictly advisory in nature, the committee cannot require federal action in response to its reports. However, in the case of a presidential advisory committee, the President must submit a report to Congress detailing either proposals for action or reasons for inaction on the recommendations contained in the advisory committee's public report.⁹³ Advisory committees established by other methods do not have similar statutory requirements.

⁹⁰ 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.

⁹¹ 5 U.S.C. §1008(b).

⁹² 5 U.S.C. §1012.

⁹³ 5 U.S.C. §1005(b).

Table 13. Examples of Statutory Language Requiring Committee Reports

Citation	Language
15 U.S.C. §9414(f)	Not later than 1 year after January 1, 2021, and not less frequently than once every 3 years thereafter, the [National Artificial Intelligence] Advisory Committee shall submit to the President, the Committee on Science, Space, and Technology, the Committee on Energy and Commerce, the House Permanent Select Committee on Intelligence, the Committee on the Judiciary, and the Committee on Armed Services of the House of Representatives, and the Committee on Commerce, Science, and Transportation, the Senate Select Committee on Intelligence, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Armed Services of the Senate, a report on the Advisory Committee's findings and recommendations under subsection (d) and subsection (e).
20 U.S.C. §9516(e)	The Board [the National Board for Education Sciences] shall submit to the Director, the Secretary, and the appropriate congressional committees, not later than July 1 of each year, a report that assesses the effectiveness of the Institute in carrying out its priorities and mission, especially as such priorities and mission relate to carrying out scientifically valid research, conducting unbiased evaluations, collecting and reporting accurate education statistics, and translating research into practice.

Source: CRS analysis of the *U.S. Code*.

Note: Examples in this table are illustrative and are not a comprehensive list of all variations that may be found in statute.

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