GSA Office of Governmentwide Policy
Office of Committee and Regulatory Management

Preparing Federal Advisory Committee Charters

GSA Committee Management Secretariat

Background:

The Federal Advisory Committee Act (FACA) 5 U.S.C., App., and the FACA Implementing Regulations (41 CFR 102-3) provide the basis for and guidance concerning the management and operation of federal advisory committees (FACs).

Regardless of whether a FAC is Presidential, statutory, or discretionary, it will require a formal federal advisory committee charter before it can conduct business. The charter marks the formal establishment of the FAC.

A charter contains certain specific components, and requires specific approval and handling. This guidance document provides a combination of statutory, regulatory, and best practice guidance to ensure proper charter preparation. Transparency and clarity are the primary objectives.

Current statutory and regulatory requirements for the components of a FAC charter are identified in §9 of FACA (5 U.S.C. App.), and are repeated in the FACA implementing regulations in 41 CFR 102-3.75. The guidance provided in both documents is broad and leaves room for interpretation. As a result, some departments and agencies choose a minimalist approach to writing charters, while other departments and agencies provide excessive information, some of which is better suited to advisory committee by-laws or operating instructions. Insertion into the charter of excessive and often unnecessary procedural requirements can leave the department or agency subject to legal challenge.

This is a best practices guidance document prepared by the U.S. General Services Administration (GSA) Committee Management Secretariat, the statutory government entity responsible for FACA oversight. Please send comments to: CMS@GSA.GOV. Please cite the title of this guidance in any correspondence.

Introduction:

This guidance is provided by the GSA Committee Management Secretariat ("Secretariat") to help executive agencies comply with federal statutes regarding preparation of charters in the establishment of federal advisory committees (FACs). The Secretariat provides interpretation of statutory language in the Federal Advisory Committee Act, clarification of regulatory language contained in the FACA implementing regulations (41 CFR 102-3), and best practice guidance for writing effective and compliant advisory committee charters.

It is GSA's goal to ensure agencies produce FAC charters that provide the necessary information to inform readers without adding unnecessary litigation risk, while at the same time, meeting the requirements of FACA, the FACA implementing regulations, guidance from GAO and other appropriate sources, and ensuring transparency and clarity.

Consultation with GSA:

For discretionary FACs, agencies are required to consult with the Secretariat when they establish, reestablish, or renew an advisory committee, or when they make major amendments to an existing advisory committee charter. Although agencies are not required to consult with the Secretariat for non-discretionary advisory committees,

the Secretariat requests that agencies provide a draft copy of the charter for format and content review. Our experience and knowledge concerning the format and content of charters will help agencies produce a well written charter that will limit mistakes and problems.

Frequently Asked Questions:

1. Who prepares the charter for a FAC?

The agency creating or housing the FAC will prepare the charter. In most cases, the charter will be drafted by the Designated Federal Officer (DFO) assigned to the committee. If the DFO is not yet appointed, the charter may be drafted by staff of the office that will support the FAC. In some agencies, the Committee Management Officer (CMO) may be involved. GSA does not prepare agency charters.

2. Can an agency ask GSA for informal advice in the development or preparation of a new charter?

Yes. GSA encourages informal coordination between the CMO and GSA regarding the format and content of new advisory committee charters.

3. How long should a typical charter be? What should be included?

As noted elsewhere in this guidance, there are 15 statutory and recommended components that should be incorporated into a FAC charter. Typically, this will require about two or three pages.

4. Does a charter have to be signed for it to be approved?

No. An approval signature is not required. Some agencies have the approving official sign a separate approval document and, in some cases, agency officials do sign the charter. That is an agency decision.

5. Should a charter for a non-discretionary advisory committee contain extensive language from the enabling document or statute?

No. The enabling document should be properly cited in the charter, and where appropriate, clarification can be included in the charter to briefly explain details relevant to the 15 charter components (see below).

6. Should a charter for an advisory committee contain language that prescribes behavior of advisory committee members?

No. The charter sets parameters for the committee as an entity, and should not set behavior for specific individuals (e.g., guidance on ethics). Such language is best conveyed in appointment letters.

7. Are the charter filing requirements for major and minor amendments the same?

Yes. All amended charters are required to be filed as outlined in the Charter Filing Requirements section below. Amending any existing advisory committee charter does not constitute renewal of the advisory committee.

8. Are subcommittees required to file a charter?

Subcommittees that report directly to a Federal officer or agency require a formal charter and must follow the same public notification and filing procedures as the parent committee.

Format and Content of an Advisory Committee Charter:

- Before you do anything else, agency staff or Designated Federal Officers (DFOs) who are developing an advisory committee should first contact the Committee Management Officer (CMO) at your agency for advice and guidance.

- The purpose of the advisory committee charter is to specify the committee's mission or charge, and general operational characteristics (not membership behavior). The charter should include all of the statutorily required components, as well as five other components (*) that are not explicitly required (at this time) but improve the overall charter and provide valuable additional information for interested parties. The fifteen sections, in order, are:

1. Committee's Official Designation (Title). Provide the committee's exact legal name.

* **2. Authority.** Provide the authority for the establishment of the committee (e.g., cite the statute, Executive Order, or note that the committee is agency authority) and reference that the committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

3. Objectives and Scope of Activities. Describe the objectives and scope of the committee's mission or charge.

4. Description of Duties. Describe the particular functions the advisory committee is expected to perform. In the absence of specific statutory authority or Presidential directive to the contrary, these duties must be advisory only.

5. Agency or Official to Whom the Committee Reports. Identify the agency or official (by title or position) to whom the advisory committee provides its advice. Normally, this is the agency head.

6. Support. Identify the agency (and component/office) responsible for providing necessary support for the committee.

7. Estimated Annual Operating Costs and Staff Years. Provide the estimated annual fiscal year costs to operate the advisory committee in dollars and staff years (in full-time equivalent, or FTE). The cost expenditure categories used in the Annual Comprehensive Review of Federal Advisory Committees should be used to estimate these costs. The cost estimates include the salary cost of staff support with benefits.

* **8. Designated Federal Officer**. This paragraph should indicate that a full-time or permanent part-time employee, appointed in accordance with agency procedures, will serve as the DFO (or designee). It should also state that the DFO will approve or call all of the advisory committee's and subcommittees' meetings, prepare and approve all meeting agendas, attend all committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the official to whom the advisory committee reports.

9. Estimated Number and Frequency of Meetings. Provide the estimated number of meetings anticipated within a fiscal year and, if known, how frequently (e.g., "approximately every four months") the meetings will occur.

10. Duration. State the period of time anticipated to be necessary for the advisory committee to carry out its purposes. For a committee that will exist for a longer period, "continuing" is appropriate.

11. Termination. Provide the committee's termination date, if less than two years from the date of the committee's establishment.

* **12. Membership and Designation.** Provide the estimated number of members, a description of the expertise required, and/or groups to be represented in order to achieve a fairly balanced membership and whether the committee will be composed of Special Government Employees (SGEs), Representative members, Regular Government Employees (RGE), or members from several categories.

* **13. Subcommittees.** Provide a statement as to whom (the agency) has the authority to create subcommittees and states that

subcommittees must report back to the parent committee, and must not provide advice or work products directly to the agency.

* **14. Recordkeeping.** State that the records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with General Records Schedule 6.2 or other approved agency records disposition schedule. These records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.

15. Filing Date. This is the date that the charter is filed with Congress. See Charter filing Requirements section for more information.

Public Notification Requirements:

A notice to the public in the Federal Register is required when a discretionary advisory committee is established, renewed, or reestablished. Upon receiving notice from the Secretariat that its review is complete, the agency must publish a notice in the Federal Register announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advanced notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

Charter Filing Requirements:

No advisory committee may meet or take any action until a charter has been filed by the CMO or by another agency official designated by the agency head to act on the behalf of the CMO.

To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with: the agency head; the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee; the Library of Congress, Federal Advisory Committee Desk, Government Documents Section, 101 Independence Avenue, SE Washington, DC 20540-4174; and the Secretariat, by adding the chartered date to the Shared Management System (SMS). Charter filing requirements for non-discretionary advisory committees are the same as those outlined above, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

FACA WEB References:

The Federal Advisory Committee Act (FACA) –
http://www.gsa.gov/portal/content/100916

Implementing Regulations (41 CFR 101-6 and 102-3) –

http://www.gsa.gov/portal/content/104034

Committee Management Secretariat Website -
http://www.gsa.gov/portal/content/104514

Finding FACA Information (www.eFACA.gov) or

http://www.gsa.gov/portal/category/101111

The GSA FACA Database (www.FACA.gov) or

http://www.fido.gov/facadatabase/

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