GSA Office of Governmentwide Policy
Office of Committee and Regulatory Management

Federal Advisory Committee Membership Balance Plan

GSA Committee Management Secretariat

Background:

The Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.) and the FACA Implementing Regulations (FACA Regulations) (41 CFR 101-6 and 102-3) provide the basis for and guidance concerning the management and operation of Federal advisory committees. Typically, groups subject to FACA require open, pre-announced meetings; public access to discussions, deliberations, records and documents; opportunity for the public to provide, at a minimum, written comments; fairly balanced membership; and the evaluation of conflicts of interest for certain members. In general, the provisions of FACA apply when the government establishes or utilizes (i.e., manages and controls) a group, made up of two or more individuals which includes at least one non-Federal employee, to provide collective advice and recommendations to a Federal official. There are also exceptions and best practices that allow managers to solicit advice outside of the FACA structure.

This document provides guidance to Federal agencies on how to prepare the Membership Balance Plan that is required for discretionary, and is strongly recommended for non-discretionary, Federal advisory committees. Please work with your department or agency Committee Management Officer to ensure that applicable internal requirements are followed.

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:

Section 5(b)(2) of the FACA requires "…the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." The corresponding FACA regulations reiterate this requirement at 41 CFR § 102-3.30(c), and, for discretionary committees being established, renewed, or reestablished, <u>require agencies to provide a description of their plan to attain fairly balanced membership</u> during the charter consultation process with GSA (41 CFR § 102-3.60(b)(3)). The document created through this process is the Membership Balance Plan. The regulations further clarify that (1) the purpose of the membership balance plan is to ensure "that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee;" and (2) "[a]dvisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed." (41 CFR § 102-3.60(b)(3)).

FACA mandates that Federal advisory committees be balanced in the points of view represented by the members, but leaves it to the discretion of each agency on <u>how</u> to do this. The FACA regulations

offer guidance in achieving a balanced Federal advisory committee membership, which include considering:

(i) The Federal advisory committee's mission;
(ii) The geographic, ethnic, social, economic, or scientific impact of the Federal advisory committee's recommendations;
(iii) The types of specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors;
(iv) The need to obtain divergent points of view on the issues before the Federal advisory committee; and
(v) The relevance of State, local, or tribal governments to the development of the Federal advisory committee's recommendations." (41 CFR § III of App. A to Subpart B)

FACA requires all Federal advisory committees to be balanced, regardless of whether they are discretionary (agency authority) or non-discretionary (statutory or Presidential) committees. Although the FACA regulations only address the Membership Balance Plan requirements for discretionary committees, GSA recommends that Executive departments and agencies apply these requirements to non-discretionary committees as well. This is a good practice and is consistent with Section 5(b)(2) of FACA which requires balanced advisory committees.

This guidance document is intended to provide a framework for prospective, analytical thinking regarding committee membership balance, and further agency FACA compliance. Agencies are encouraged to include additional information beyond what is suggested in this guidance document, as they deem appropriate.

Elements of the Membership Balance Plan:

The FACA Membership Balance Plan informs, and is consistent with, the federal advisory committee's charter, especially the section on advisory committee membership and designation. The plan is submitted as supporting documentation when an agency establishes a Federal advisory committee. The agency should update the plan whenever a Federal advisory committee is renewed or reestablished, and also when a Federal advisory committee's charter is amended. The plan is a stand-alone document that describes how the agency intends to achieve balance in terms of the points of view represented and the functions to be performed by the Federal advisory committee. Elements of a Membership Balance Plan include:

(1) Name. State the legal name of the Federal advisory committee.

(2) Authority. Identify the authority for establishing the Federal advisory committee (e.g., cite the statute, Executive Order, or note that the Federal advisory committee is established under agency authority).

(3) Mission/Function. Describe the mission/function of the Federal advisory committee.
(a) If the Federal advisory committee is discretionary, the mission/function will be a primary factor influencing the balance of the Federal advisory committee.

(b) If the Federal advisory committee is statutory or created by Executive Order, the composition of the Federal advisory committee may already be prescribed by the authorizing legislation (which may result in a pre-determined balance of the members).

(4) Points of View. Based on the purpose of the Federal advisory committee, this section:

(a) should describe the process that will be used to ensure the committee is balanced in terms of the points of view represented for the function(s) to be performed by the committee. This should include identifying the categories (e.g., individual expertise or represented interests) from which candidates will be considered;

(b) could identify an anticipated relative distribution of candidates across the categories; and

(c) should discuss how a determination was made to appoint any individuals as Special Government Employee (SGE) or Representative (Rep) members.

This analysis will affect the size of the Federal advisory committee, how it will be structured, and whether it is balanced. Although numerical parity is not required, too many or too few individuals representing one interest or area of expertise could result in the Federal advisory committee not being balanced in the viewpoints represented. If the Federal advisory committee is statutory or created by Executive Order, the exact number of members or a cap on the total number of members may be specified in the authorizing legislation.

This section should clearly state that membership balance is not static and may change, depending on the work of the committee.

(5) Other Balance Factors. List any other factors your agency identifies as important in achieving a balanced Federal advisory committee. These factors, which are not legally required, could include, the geographic location of candidates, importance of including regional, state, or local government expertise, consideration of the impact on local or specific communities, diversity in work sector (e.g., private industry, academia), etc.

(6) Candidate Identification Process. Summarize the process intended to be used to identify candidates for the Federal advisory committee, key resources expected to be tapped to identify candidates (e.g., recommendations from current and former Federal advisory committee members, publication of nomination notices, search of relevant professional associations, etc), and the key persons (by position, not name) who will evaluate Federal advisory committee balance (e.g., the Designated Federal Official, agency FACA attorney, agency head, etc). The summary should:

(a) describe how the process will result in consideration of a cross-section of those directly affected, interested, and qualified, and/or will identify individuals with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed (41 CFR § 102-3.60(b)(3));

(b) identify the key agency staff (again, by position, not name) involved in determining balance on the Federal advisory committee;
(c) briefly describe how Federal advisory committee vacancies, if any, will be handled by the agency (vacancies, and the length of time they remain unfilled, can impact the balance of the Federal advisory committee); and
(d) state the membership term limit of Federal advisory committee members, if applicable. Term limits result in turnover of membership and new perspectives, which affects the balance of a Federal advisory committee.

(7) Subcommittee Balance. Subcommittees subject to FACA should either state that the process for determining Federal advisory committee member balance on subcommittees is the same as the process for the parent Federal advisory committee, or describe how it is different.

(8) Other. Provide any additional information that supports the balance of the Federal advisory committee.

(9) Date Prepared/Updated. Insert the actual date the Membership Balance Plan was initially prepared, along with the date(s) the Plan is updated. This is not the date the charter consultation is held with GSA.

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/*

Committee Management Secretariat
Office of Committee and Regulatory Management
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