

Federal Advisory Committee Act

A Legal Overview

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Federal Advisory Committee Act

- Background

- Congress passed in 1972 to regulate groups that provide advice to the Federal Government
- Congressional oversight (reports, appropriations)
- Provides for public participation
- Codified at 5 U.S.C. App. 2; 41 C.F.R. Part 102-3

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- Applicability

- Groups that include participants who are not federal employees that the Executive branch *establishes* or *utilizes* for the purpose of obtaining advice or recommendations
- “Utilized” means ‘actual management and control’
- Does not apply to:
 - individual advice
 - operational committees
 - inter/intra-governmental committees
 - local civic groups

Federal Advisory Committee Act

- Requirements

- Advisory functions only
- Establish by law, Presidential authority, or discretionary
- File a charter containing authority, mission, goals, objectives, and logistics

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- Requirements, cont.
 - Public notice of meetings; public may participate and file statements; detailed public minutes; can close meetings
 - DFO to call and be present at all meetings
 - Terminate according to statute, when purpose completed, or after 2 years (unless renewed)

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- Subcommittees

- Defined as groups reporting to full advisory committee; may include non-committee members
- Permissible when reporting to full committee for its consideration and deliberation
- FACA does not apply

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- Miscellaneous

- Public availability of FACA committee and (some) subcommittee records
- Penalties for failure to comply with FACA

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- Debunking the Myths of FACA
 - **Myth 1:** Meetings are opportunities for members to bring their personal or industry agendas to the table
 - **Myth 2:** Committee members cannot socialize
 - **Myth 3:** Members' personal notes are committee records that must be made available to the public
 - **Myth 4:** There is lifetime membership on a committee

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