

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 5420.40E
July 21, 2016

GSA ORDER

SUBJECT: GSA Federal Advisory Committee Management Program

1. Purpose. This policy transmits the new “GSA Federal Advisory Committee Management Program.”
2. Scope and applicability. This policy applies to all U.S. General Services Administration (GSA) offices, with the exception of the Office of Inspector General and the Board of Contract Appeals.
3. Cancellation. [ADM P 5420.40D CHGE1](#).
4. Background.
 - a. [ADM P 5420.40D CHGE 1](#) provided instructions and guidelines for the establishment, management, and termination of committees regardless of whether the committees were designated as interagency, intra-GSA, or committees that fall under the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.
 - b. This policy pertains only to the management of committees that fall under the provisions of FACA and provides instruction and guidance for managing these committees.
 - c. For instructions and guidelines pertaining to the management of non-FACA committees (interagency or intra-GSA committees), refer to OAS 5420.1 Intergovernmental, Intragovernmental GSA and Extra-governmental Committees.
5. Signature.

/S/

DENISE TURNER ROTH
Administrator

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CHAPTER 1. INTRODUCTION

1. Purpose. This policy applies to the management of GSA's advisory committees that fall under the provisions of the Federal Advisory Committee Act (FACA). The policy is designed to provide general information and guidance in preparing the necessary materials and documents needed to establish or renew a Federal advisory committee, appoint committee members, conduct Federal advisory committee meetings, track costs, complete reports, maintain records, and terminate a Federal advisory committee.

a. "Advisory committee" means any committee that is (1) established by statute, (2) established or utilized by the President, or (3) established or utilized by any agency official to obtain advice or recommendations that are within the scope of his or her responsibilities. The definition of advisory committee does not include any committee that is composed wholly of full-time or permanent part-time, officers or employees of the Federal Government.

b. Under FACA, the head of an agency may establish a discretionary advisory committee when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government.

c. Consult with the GSA Committee Management Officer (CMO) with questions regarding FACA's applicability to a particular group. The CMO may suggest further consultation with GSA FACA counsel to make a formal determination.

2. Federal Advisory Committee Act (FACA) Overview.

a. The Federal Advisory Committee Act was enacted in 1972 to ensure that advice by the various advisory committees formed over the years is objective and accessible to the public. The Act formalized a process for establishing, operating, overseeing, and terminating these advisory bodies and created the Committee Management Secretariat to monitor compliance with the Act. The Federal Advisory Committee Act is the legal foundation defining how Federal advisory committees operate. The law has legal special emphasis on open meetings, chartering, public involvement, and reporting.

b. Each Federal agency that sponsors advisory committees must adhere to the requirements established by the FACA, as well as regulations promulgated by GSA's Committee Management Secretariat (CMS). GSA has had the responsibility for overseeing the FACA governmentwide since 1977. Together, GSA and the Federal community work to eliminate the overlap or duplication of advisory bodies, terminate unnecessary or inactive committees, and develop committee management regulations, guidelines, and training in response to requirements of the executive branch and Congress.

CHAPTER 2. COMMITTEE ESTABLISHMENT, RE-ESTABLISHMENT, RENEWAL, AND TERMINATION PROCEDURES

1. Types of Advisory Committees.

a. Discretionary Advisory Committee. Established under the authority of an agency head or is authorized, but not required, by statute.

b. Non-discretionary Advisory Committee. Required by statute, or by Presidential directive, or by statute.

c. Committees not covered by FACA. Following are examples of committees or groups not covered by FACA. 41 CFR § 102-3.40 provides further examples of other types of groups that are not covered by FACA.

(1) Intragovernmental committees. Any committee composed wholly of full-time or permanent part-time Federal employees. This exemption applies to committees composed wholly of GSA employees (i.e., an intra-GSA committee), and to committees composed partially of GSA employees and partially of employees of other Federal agencies (i.e., an interagency committee).

(2) Intergovernmental committees. Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated representatives) acting in their official capacities that meet certain conditions. See guidelines issued by the Office of Management and Budget on section 204(b) of the Unfunded Mandates Reform Act of 1995, OMB Memorandum M-95-20, dated September 21, 1995.

(3) Local civic groups. Any local civic group whose primary function is that of rendering a public service to with respect to a Federal program;

(4) Committees not actually managed or controlled by the executive branch. Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch.

(5) Groups assembled to provide individual advice. Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole.

(6) Any group that meets with Federal officials for the purpose of exchanging facts or information.

(7) Operational committees. Any committee established to perform primarily

operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may become subject the Federal Advisory Act if it becomes primarily advisory in nature.

2. Forming and Chartering a Federal Advisory Committee. Requirements for establishing an advisory committee vary depending on the source of the authority for the advisory committee. FACA (41 CFR102-3.50) identifies four sources of authority for establishing an advisory committee: (1) Required by statute where Congress establishes an advisory committee, (2). Presidential authority where by order of the President or Presidential directive, (3) Authorized by statute where Congress authorizes, but is not directed by the President or an agency to establish a committee, (4). Agency authority where GSA under general authority in Title 5 of U.S. Code or under general agency authorizing statues. The procedures include consulting and working closely with the Committee Management Officer, preparing a draft charter and decision memorandum, and publishing a notice in the Federal Register.

Establishing an Advisory Committee:

a. Discretionary Advisory Committee. A discretionary advisory committee may be established only when it is essential to the conduct of GSA business and when the information to be obtained is not already available through another committee or government source. To establish a discretionary advisory committee the Staff Office, Service, or Region must inform the GSA Committee Management Officer (CMO).

The Staff Office, Service, or Region must identify a Designated Federal Officer (DFO). The CMO will meet with the DFO to provide guidance and validate the organization's concern regarding the need to establish a FACA committee. The CMO will discuss the organization's concerns regarding FACA, and arrange a meeting with CMS if there is a valid need to assist the organization's efforts to comply with FACA. The CMS, with an understanding of the organization's need and related background, will provide insight and guidance on how to make use of the proposed discretionary advisory committee, alternate methods of attaining its purpose or inform the organization of a pre-existing advisory committee performing similar functions.

The DFO must also draft a decision memorandum to the Administrator, a membership balance plan (MBP) and committee by laws. Refer to the charter template in Appendix A. The Administrator is the signatory for the charter, the decision memorandum and the all filing letters. The decision memorandum must contain, at a minimum:

(1) An explanation why the advisory committee is essential to the conduct of agency business and is in the public interest;

(2) An explanation why the proposed advisory committee's functions cannot be performed by GSA, another existing advisory committee, or other means such as a public hearing;

(3) A description of the plan to attain a fairly balanced membership. Include a Membership Balance Plan (MBP). Refer to the MBP template in Appendix B; and,

(4) A draft *Federal Register* notice of establishment of the committee. Notice of establishment and solicitation for committee membership may be combined in one notice.

b. Non-discretionary Advisory committees. The CMO will be notified via an Executive order, Presidential directive or statute to establish a non-discretionary advisory committee. Also, program officials interested in establishing a non-discretionary advisory committee should consult with the CMO for guidance on establishing a non-discretionary advisory committee. The CMO will provide continued guidance to the host staff office with drafting the required establishment documents accordance with the establishing authority such as the statute, Executive order, or appropriate authorizing document(s).

The Staff Office, Service, or Region must identify a DFO. The DFO should draft a charter package. The charter package will include a proposed charter, a decision memorandum from the appropriate Staff Office, Service, or Region to the Administrator explaining the need for the non-discretionary advisory committee by citing and providing a copy of the applicable statute or Presidential directive, a copy of the Membership Balance Plan (as appropriate), filing letters, and any additional information that is relevant. The decision memorandum must address, at a minimum, the following information:

- (1) The committee's official designation;
- (2) The committee's objectives and the scope of its activity;
- (3) The period of time necessary for the committee to carry out its purpose;
- (4) Identify GSA as the agency responsible for providing the necessary support for the committee or other agency if several agencies comprise the advisory committee;
- (5) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (6) The estimated annual operating costs in dollars and man-years for the committee;
- (7) The committee's termination date if less than two years from the date of the committee's establishment; and

(8) The date the charter is filed.

(a) The DFO must submit the charter package to the CMO prior to circulating the charter package for the Administrator's signature. Upon completion of the CMO's approval, The DFO will submit the charter package for circulation for the Administrators' signature.

(b) After the Administrator signs the charter and accompanying documents, the DFO returns a copy of the signed charter and the original signed filing letters to the CMO to facilitate filing. The committee will not meet or take any action until the charters' filing is complete.

3. Re-establishment of a Federal Advisory Committee. The procedures for establishing a discretionary advisory committee apply when GSA re-establishes a discretionary advisory committee.

4. Renewing an existing Federal advisory committee.

a. Discretionary advisory committees. Prior to recommending renewal of a discretionary advisory committee, the DFO will consult with the CMO no later than 60 days regarding the pending expiration of the committee's charter. The DFO and the CMO will validate the need to continue the advisory committee and renew the charter.

Upon validating the need to continue an advisory committee, and at least 60 calendar days prior to the current charter expiration date, the DFO will prepare charter renewal documents for the Administrator's signature. The renewal documents consist of the current charter (with any needed updates), a decision paper, and updates to Membership Balance Plan (MBP) for the Administrator's signature. The DFO will submit the charter renewal package to the CMO for review for the Administrator's signature. The DFO will submit the decision memorandum renewal package to the Administrator containing at a minimum:

- (1) All proposed revisions to the charter;
- (2) Justification for continued need and an explanation why the advisory committee is essential to the conduct of GSA business and is in the public interest;
- (3) An explanation of how well the advisory committee has accomplished its mission, including details as to its accomplishments and information discussing whether the degree of expenditures to support the advisory committee is justified;
- (4) An explanation why the proposed advisory committee's functions cannot be performed by GSA, another existing advisory committee, or other means such as a public hearing;

(5) An updated MBP, or, if the current Member Balance Plan (MBP) has not changed, provide a notation that there is no change to the MBP; and

(6) A copy of the current charter (due to expire).

b. Non-discretionary advisory committees. The renewal procedures for non-discretionary advisory committees are the same as those for establishing non-discretionary advisory committees.

5. Charter filing requirements. A committee charter is ready to be officially filed after the Administrator approves the charter. After the Administrator's signature is applied, the charter is ready to be filed with the appropriate offices of oversight. The DFO will facilitate circulation for Administrator's approval and provide the CMO with a copy of the signed charter. The CMO will complete filing requirements for all GSA advisory committees. The date of filing constitutes the date of establishment of the advisory committee. An advisory committee may not meet or take any action until a charter is has been filed by the CMO.

a. Filing documents. An advisory committee may not meet or take any action until a charter has been filed by the CMO. The CMO will process the filing of the charter renewal documents to the appropriate entities:

(1) The Administrator;

(2) Congressional Oversight Committees

(3) Library of Congress;

b. Discretionary committees. To establish, renew or reestablish a discretionary advisory committee, a current charter must be filed with each of the standing appropriate filing entities as specified in Chapter 2 paragraph 5(a) (1) – (3).

c. Non-Discretionary committees. To establish, renew or reestablish a discretionary advisory committee, a current charter must be filed with the appropriate filing entities as outlined in Chapter 2, paragraph 5 (a) (1) – (3). The date of establishment for Presidential advisory committees is the date the charter is filed with the Committee Management Secretariat (CMS).

6. Charter amendments. Federal advisory committee charters may be amended for minor or major changes. The procedures for making changes and filing amended charters will depend upon the authority for establishing the advisory committee. Amending an existing advisory committee charter does not constitute a renewal of the committee's charter.

The Administrator is the signatory for all charter amendments. The DFO must submit a draft charter accompanied by a decision memorandum to the Administrator containing at a minimum:

- a. Any proposed revisions or the amended language to the charter;
- b. Justification for the change and an explanation why the charter needs to be amended;
- c. An explanation of how well the advisory committee will better accomplished its mission once the amended language is charter is effective;
- d. A copy of the current charter (without the amended language);
- e. An updated MBP, or, if the current MBP hasn't changed, provide a notation indicating the MBP has not changed; and
- f. Return a signed amended charter to be filed by the CMO as outlined in Chapter 2, paragraph 5 of this document. The CMO will file the charter documents as specified in Chapter 2 paragraph 5(a) (1) – (3).

(1) Major Charter Amendments. Major charter amendments to advisory committee charters include substantial changes in objectives, scope, duties and estimated costs.

(a) Non-Discretionary Advisory Committee. Major charter amendments for Non-discretionary charters are substantial changes in objectives, scope, duties and estimated costs mandated by changes in the authorizing the Presidential directive, Executive order, or by statute.

i. Consultation. The DFO must consult with the CMO regarding the requirement to amend a Federal advisory committee charter for a nondiscretionary advisory committee. The CMO will arrange for consultation with the CMS, the Office of the General Counsel (OGC), and DFO whereby the parties will determine the most effective language and methodology to implement the amended language. Further consultation is required with the CMS.

ii. Procedures. The DFO must draft an amended charter accompanied by a decision memorandum from the to the Administrator, explaining the basis and the necessity for charter's amendment; and as appropriate, by citing and providing a copy of the applicable statute or Presidential directive or Executive order, and any additional information that is relevant. A copy of the Membership Balance Plan (MBP) should be included as appropriate.

(b) Discretionary Advisory Committee. When the DFO or CMO determines

the technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope substantially. The charter language must as amended as necessary and the charter filed as outlined in Chapter 2.paragraph (5) (a) (1) - (3).

i. Consultation. The DFO will consult with the CMO regarding the requirement to amend the charter and present the basis for the amendment. The CMO will validate the proposed amendment language and will consult with the CMS to explain the purpose of the changes and the necessity for the changes.

ii. Procedures. The DFO will draft an amended charter containing relevant changes to sections of the current charter and submit the charter package to the CMO for review of the amended charter in accordance with Chapter 2 paragraph 5(a) (1) – (3). of this directive.

(2) Minor Charter Amendments. Minor changes are changes to the name of the advisory committee, technical provisions that are inaccurate, modifying the estimated number or frequency of meetings, a change to the authorizing language that has been the basis for establishing an advisory committee, or other minor changes that do not alter the advisory committee's objectives and scope substantially.

(a) Non-Discretionary advisory committee. The DFO must consult with the CMO regarding the requirement to amend a Federal advisory committee charter, which must be authorized by Executive order or statute. The CMO will consult with OGC and the CMS regarding the most efficient and effect way to implement the amendments per the Executive order for the discretionary Federal advisory committee.

i. Consultation. The DFO will consult with the CMO; who will arrange consultation with the CMS and OGC to ensure all minor technical changes are consistent with the relevant establishing authority.

ii. Procedures for Minor Charter Amendments. The DFO will draft an amended charter accompanied by a decision memorandum to the Administrator explaining why the advisory committee charter is to be amended, which shall cite the applicable statute or Presidential directive, and any additional relevant information.

(b) Discretionary Advisory Committee. The staff office, service, or region must consult with the CMO regarding the requirement to amend a Federal advisory committee charter for a discretionary advisory committee. When the DFO or CMO determines that the technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope substantially. The charter language must as amended as necessary and the charter filed as outlined in 2a (5) (a) 1- 4.

i. Consultation. The DFO will consult with the CMO; who will arrange consultation with the CMS and the Office of General Counsel to ensure any that all minor technical changes are consistent with the relevant establishing authority.

ii. Procedures. The DFO must draft an amended charter accompanied by a decision memorandum from the to the Administrator, explaining the basis and the necessity for charter's amendment; and as appropriate, by citing and providing a copy of the applicable statute or Presidential directive or Executive order, and any additional information that is relevant. Include a copy of the Membership Balance Plan (MBP) as appropriate.

7. Public notification requirements.

a. Federal register notice procedure. Upon receiving approval by the Administrator to establish, renew, or reestablish a committee, the DFO 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.

b. Time required for notices. Notices of establishment and reestablishment of advisory committees must appear in the *Federal Register* at least 15 calendar days before the charter is filed. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

(1) Discretionary Advisory Committee. A notice to the public must be published in the *Federal Register* when a discretionary advisory committee is established, renewed or reestablished. Contact the CMO and the GSA Regulatory Secretariat Division, Office of Government-wide Policy to obtain instructions for GSA internal approval and processing of *Federal Register* notices.

(2) Non-Discretionary Advisory Committee. There is no requirement to notify the public of the establishment of a non-discretionary advisory committee.

8. Committee by-laws. The by-laws provide the framework and operational structure by which the committee conducts business. They establish parameters by defining the scope and duration of, and the procedures governing, the advisory committee's work. They clearly define the mission and objectives of the committee as they answer questions related to the committee's membership and organizational structure. In addition, they address procedural issues such as guidelines related to meetings and what constitutes a quorum for meeting and voting purposes. When a new advisory committee is formed, the DFO should prepare the by-laws and send them to the CMO and OGC for final review and approval prior to adoption by the full committee. The creation of the by-laws is the responsibility of the DFO, not the Federal advisory committee. The by-laws should contain, but are not limited to the following information:

- a. Committee functions, objectives, organization, and operation;
- b. Membership and member responsibilities;
- c. Meeting operational parameters to include general information, notice requirements, quorum and voting procedures, open and closed meeting requirements, criteria for meeting minutes, procedures for handling public comments, potential meeting formats (i.e. in-person, teleconference, virtual);
- d. Roles and responsibilities of key individuals directly related to the management of the committee, such as the chairperson, DFO, executive director, and support staff;
- e. Expenses. Indicate what organization will be responsible for the costs associated with managing the committee and what types of expenses are authorized; and
- f. Amendments. Indicate who has the authority to amend the by-laws. Annotate dates of amendments.

9. Terminating an advisory committee.

- a. Advisory committees should be terminated when:
 - (1) They are no longer carrying out the purposes for which they were established;
 - (2) When the stated objectives of the committee have accomplished;
 - (3) When the subject matter work of the committee has become obsolete by the passing of time;
 - (4) Another entity the assumes the committee's functions; or
 - (5) When Administrator determines the operation is excessive in relation to the benefits provided to GSA.
- b. Advisory committees will automatically terminate two years after its date of establishment unless:
 - (1) The statutory authority used to establish the advisory committee provides a different duration;
 - (2) The President or the Administrator determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or the Administrator determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or the Administrator renews the committee charter not later than two years after its date of establishment in accordance with paragraph 2(1), Forming and chartering a committee.

CHAPTER 3. COMMITTEE MEMBERSHIP

1. Membership selection and appointment process. A critical element in the establishment of a Federal advisory committee is the selection and appointment of committee members. This is an activity that can be started prior to or while the charter is going through the GSA approval process. The committee however cannot meet or operate until the charter is officially filed (see Chapter 2, part 2). Selecting and appointing members early ensures that the committee can meet as soon as practicable after the charter is filed.

Unless otherwise provided by statute or Presidential Directive, the Administrator appoints members to GSA advisory committees. The DFO may recruit potential members through a notice in the Federal Register. Appointments are personal to the member and are not transferrable to another individual or delegable.

a. Review panel. After conducting broad outreach for candidates, the DFO should convene a panel to review and evaluate the applicants using a pre-developed set of criteria. After the panel has established a list of qualified candidates, they should be interviewed for qualifications, interest, and availability.

b. OGC review. Once the candidate list is established, the candidates must be vetted and cleared by OGC for balance, appropriate membership designation and any conflict of interest issues (this pertains to SGE and RGE appointments).

c. Member appointment process. To appoint or reappoint committee members, the DFO must prepare a membership package for review, clearance and approval by the GSA Administrator. Non-Presidential representatives, SGE, and RGE appointments must be approved by the Administrator. The package must include:

(1) A decision memorandum from the appropriate Staff Office or Region to the Administrator recommending candidates for appointment or reappointment. This memo must include a statement confirming that the candidates are not Federally-registered lobbyists, and that the financial disclosure reports for SGE and RGE membership appointments have been reviewed by OGC.

(2) A list of the candidate members indicating whether the candidate is recommended for appointment, reappointment, or as an alternate candidate; type of designation (representative, SGE, or RGE); and a short biography and brief explanation of each candidate's qualifications.

(3) An appointment letter for each candidate for signature by the Administrator.

(a) Current charter (as background).

(b) Current membership balance plan (as background).

d. Acceptance of membership appointment. After the candidate is approved by the Administrator, the DFO must mail to each prospective member an appointment letter, along with a “Membership Acceptance Form” to be completed and returned by the appointed member. In addition, the DFO must provide Human Resources with the list of SGE members so that they can take the necessary action to bring them on board. It is important for the DFO to ensure all SGE and RGE disclosure documentation and appointment paperwork is completed before the members assume their duties on an advisory committee.

e. Departing members. When members complete their designated terms of service or if they leave for any reason, a letter of appreciation and/or a certificate of “Recognition and Appreciation” may be prepared for the Administrator’s signature.

2. Delegated Federal Officer’s (DFO) role in membership selection. The DFO plays a central role in the selection and appointment of committee members and has responsibility for the following for Discretionary Committees:

a. Identifying and soliciting candidates for membership for discretionary advisory committees;

b. Ensuring the committee members bring a balanced representation of points of view based on the function of the committee for discretionary advisory committees;

c. Maintaining documentation on proposed candidates and their qualifications for discretionary advisory committees;

d. Coordinating member selection and appointment designation with OGC and assisting OGC in obtaining any required ethics forms;

e. Assembling the membership package and obtaining the Administrator’s approval, and coordinating with the CMO on the documentation required in the membership package;

f. Obtaining the required “Membership Acceptance Form” from committee members after Administrator approval and invitation to serve; and

g. After Administrator approval, coordinating with Human Resources for Agency onboarding procedures of Special Government Employees (SGEs).

3. Membership types. Members are not subject to ethics laws if they are appointed to represent the point(s) of view of a particular group or segment of the public. The four member types on Federal advisory committees are:

a. Regular Government Employee (RGE) member. Generally, an individual employed within the meaning of 5 U.S.C. 2105, or a Federal officer as defined in 5

U.S.C. 2104. This category also includes a Federal officer holding a position in the uniformed services. (See 5 U.S.C. 2101(3) for a listing of the uniformed services.)

b. Special Government Employee (SGE) member. An officer or employee of the executive or legislative branch who is retained, designated, appointed, or employed to perform temporary duties (either on a full-time or intermittent basis) not to exceed 130 days during any period of 365 consecutive days. SGEs at GSA serve without compensation. In general, SGEs are experts in their field who provide Federal advisory committees with their own best independent judgment based on their individual expertise. (For more information on the definition of an SGE, see 18 U.S.C. 202(a), or consult with the GSA OGC Ethics officials.)

c. Representative member. An individual who is not a Federal employee, who is selected for membership on a Federal advisory committee for the purpose of obtaining the point of view or perspective of an outside interest group or stakeholder interest. While representative members may have expertise in a specific area, discipline, or subject matter, they are not selected solely on the basis of this expertise, but may represent the point of view of a group or particular interest. Representative members represent the collective interest of the group represented.

d. Ex officio member. An individual who serves on a Federal advisory committee strictly by virtue of holding a particular governmental or organizational office, title, or other specified position. For example, if the committee's authority or charter states that a Federal officer by position, or the Governor of a particular State, or the leader of a particular tribe, or the head of a particular trade association or other organization will serve as a member of the committee, that individual would be characterized as an Ex Officio member.

4. Ethics requirements for members. Members who are RGEs or who are appointed as SGEs must comply with the applicable conflict of interest laws, standards of conduct rules, and financial disclosure requirements. Industry representatives are not subject to the Federal ethics rules. It is important for the DFO to understand what ethics requirements are involved as soon as OGC makes a determination regarding the membership type for each individual who will be serving on an advisory committee. OGC should brief the DFO and GSA staff directly involved with the committee regarding the ethics requirements for members appointed as SGEs and RGEs.

a. Financial disclosure reports. Prior to membership recommendations for appointment by the Administrator, each proposed SGE and RGE must complete and submit the appropriate financial disclosure reports to OGC. If an RGE has a current, certified report on file with her individual agency, then he/she may provide a copy to OGC rather than file a new report. Each SGE and RGE must file a financial disclosure report annually. The DFO shall assist OGC in obtaining any required ethics forms. The OGC ethics official must review the financial disclosure reports and determine that no conflict of interest exists between the candidates' financial interests and the work expected to be undertaken by the committee.

b. Ethics briefing. Federal Advisory Committee members are required to receive an ethics briefing prior to conducting work for the committee on which they are to serve, and annually, thereafter, unless they serve as representative members. OGC will provide the ethics briefing.

c. Personal representation by members. Members may not represent themselves as members of a GSA advisory committee beyond their official duties serving as members, such as on business or personal cards or letterhead.

5. Committee membership. Unless membership is defined by statute or Executive order, members serve at the discretion of the inviting authority. As such, deliberate consideration should be employed to identify or understand the scope and objectives of the committee, including the issues, concerns, disputes, and relationships that may impact subjects the committee will be addressing. Before making any recommendations regarding membership composition, thought should be given to the functions, tasks, and needs of the committee. Based on this information, a list should be created showing the expertise, perspectives and interests that should be represented on the committee. This information will affect the committee's size and composition. If committee needs change, the membership should be adapted to ensure it reflects the necessary expertise to accomplish the committee's work.

a. Committee size. For discretionary committees, there are no requirements regarding the size of the advisory committee. Statutes mandating the establishment of non-discretionary committees, however, frequently include membership requirements. When determining the size of a committee, it is important to consider that a large committee (greater than 20-25 members) can be hard to manage, less effective, and more costly. Members of the committee should be limited to the fewest needed in order to most efficiently and effectively accomplish the objectives described in the advisory committee charter, while ensuring a balanced membership. It is recommended that GSA committees have a minimum of 10-15 members in order to ensure a diversity of viewpoints.

b. Membership balance. A key consideration when selecting committee members is the FACA requirement for balance. The FACA does not mandate how a committee can achieve a balanced membership; however, the FACA requires that the membership of an advisory committee be fairly balanced in the points of view represented and the functions to be performed by the committee. The committee charter should include a brief explanation of how balanced membership will be achieved and maintained. Further, a detailed MBP must be created and submitted along with the charter for consultation by the Secretariat. Refer to Appendix B for instructions for completing a MBP.

c. Membership term limits. Membership term limits are established by the DFO, and can range from one to three years. It is GSA policy that each member cannot serve for more than six consecutive years. Consider staggering the terms of members to ensure that at any given time no more than half of the committee members are at the

end of their terms. This can help to avoid disruptions to committee activities, ensure a smooth succession, and maintain differing points of view. Membership terms should be specified clearly in both invitation and reappointment letters.

d. Membership solicitation. The membership solicitation and evaluation process shall be started at least six months before convening the committee. Having the most qualified individuals who represent key interest and balanced viewpoints enables the committee to provide recommendations that GSA can rely on, as the advice will represent diverse stakeholder perspectives. The DFO can begin the solicitation process by compiling a list of people or organizations that have knowledge and/or involvement in the issues that the committee is addressing. The list of potential candidates can be compiled from many sources, including other agency officials, other Federal officials, Congress, professional associations, current and former advisory committee members, stakeholder, or the general public. It is a best practice to broaden the pool of qualified candidates by soliciting nominations of qualified individuals through a *Federal Register* notice. The solicitation for membership must include detailed instructions for applying.

6. Prohibition of Federally-registered lobbyists as members. As directed in the OMB Final Guidance, published in the *Federal Register* on October 5, 2011, and revised on August 7, 2014, appointment or reappointment of Federally-registered lobbyists in an individual capacity, to advisory committees (or subcommittees) and other boards and commissions is prohibited.

a. Lobbyist ban. DFOs will inform committee members bi-annually that the conducting of activities that would require them to be federally registered lobbyist after appointment to serve on a Federal advisory committee in an “individual capacity” would necessitate their resignation or removal from committee membership. The lobbyist ban does not apply to lobbyists who are appointed in a “representative capacity,” meaning that they are appointed for the express purpose of providing a committee with the views of a nongovernmental entity, a recognizable group of persons or nongovernmental entities (an industry sector, labor unions, or environmental groups, etc.), or State or local government. Waivers are not permitted under any circumstances.

b. Confirming lobbyist status. The DFO must check the Federal lobbyist databases housed for the United States Senate and the United States House of Representatives web pages, and document annually, prior to appointment or reappointment that proposed members are not Federally-registered lobbyists. This must be accomplished by requiring that the appointed member certify that he or she is not a federally registered lobbyist. Certification forms must be retained and kept with the official committee file.

c. Membership removal. If a GSA appointed member becomes a Federally registered lobbyist, while serving in their individual capacity, or has engaged in activities that would warrant resignation during their membership term, the members are required to resign or be removed immediately from membership by the DFO. The DFO will notify

the member and chairperson of the FACA lobbyist violation immediately in writing (via email). On the date of notification of the FACA lobbyist violation, the member will cease and desist all activity and communication with all GSA FACA committees. The DFO will submit a copy of the member resignation or removal action to the CMO and retain a copy for the committee files.

d. Member re-appointment/reinstatement. An individual who previously served as a federally registered lobbyist may be may be appointed or re-appointment in an individual capacity only if the individual has filed a bona fide de-registration or, if the individual has been delisted by his or her employer as an active lobbyist reflecting the actual cessation of lobbying activities or if they have not appeared on a quarterly lobbying report for three consecutive quarters as a result of their actual cessation of lobbying activities.

An individual who has previously served as a FACA committee member and engaged in lobbying activity that required their resignation/or removal from the committee may be reconsidered as viable candidates by the DFO. However, in order to be reconsidered for appointment, the individual must provide written documentation to the DFO that:

- (1) They have filed a bona fide deregistration form;
- (2) They have been delisted by their employer (if any) as a lobbyist; and
- (3) They have not served as a lobbyist for three consecutive quarters.

7. Members compensation. In accordance with 41 CFR 102-3.130(b) and (c), it is GSA's policy that members will not be compensated for performance of their advisory committee duties.

a. Federal employees. Federal employee committee members remain covered during the assignment by the compensation system that currently applies to that employee.

b. Payment of travel expenses. Committee members may be allowed travel expenses, including per diem, in accordance with 5 U.S.C. 5703. Regardless of the type of committee membership appointment, any travel expenses shall be paid at rates equivalent to that allowable to Federal employees.

CHAPTER 4. MEETINGS

1. Meeting types and requirements. After a Federal advisory committee has been established and members appointed, the DFO is responsible for organizing, planning, and coordinating all aspects of the meetings. FACA requires that all meetings be open to the public, unless the Administrator determines, in writing, that the information to be discussed at the meeting falls under one of the exemptions listed in the Government in the Sunshine Act. OGC must concur on all closed meeting determinations. Approval to close a meeting to the general public must be obtained by the Administrator at least 30 days in advance of the scheduled meeting date.

a. How meetings will be conducted. There are several important decisions concerning how committee meetings will be conducted, such as whether the meeting(s) will be administrative or substantive in nature, whether the meetings will be open or closed to the public, in person or virtual, whether there will be subcommittees and, if so, how subcommittees should operate, and choosing the location(s) where meetings will be held.

b. Meeting openness requirement. All meetings and activities of advisory committees that involve discussion of the substantive work of the committee are subject to FACA's openness requirements, regardless of the forum of the meeting (e.g., in person, teleconference, webinar, webcast.) in accordance with 41 CFR 103-3.135. Certain advisory committee activities are not subject to the FACA public notice and open meeting requirements. Specifically, the following activities of an advisory committee are excluded:

(1) Preparatory work. Meetings of two or more advisory committee or subcommittee members convened solely to conduct preparatory work, such as gathering information, conducting research, or analyzing relevant issues and facts in preparation for a meeting of the advisory committee or subcommittee, or to draft position papers for deliberation by the advisory committee or subcommittee.

(2) Administrative work. Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or subcommittee (such as committee organization and discussion of by-laws and other procedural issues) or to receive administrative information from a Federal officer or agency (such as travel and per diem requirements, ethics, and orientation.) Such meetings cannot include discussion of the substantive issues being addressed by the committee or subcommittee.

c. Public notification requirement. The DFO must ensure a meeting notice is published in the *Federal Register* at least 15 calendar days prior to a Federal advisory committee and subcommittee meeting. Preparatory work and administrative meetings are not required to be published in the *Federal Register*. The *Federal Register* meeting notice, as a minimum, must contain the following:

- (1) The name of the advisory committee (or subcommittee, if applicable);
- (2) The time, date, place, and purpose of the meeting;
- (3) A summary of the agenda, and/or topics to be discussed;
- (4) A statement whether all or part of the meeting is opened or closed to the public. If the meeting is closed, state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (5) Instructions describing how the public can participate and submit comments;
and
- (6) The name and telephone number of the DFO who may be contacted for additional information concerning the meeting. Provide a link to the committee's website, if applicable.

2. Meeting preparations, conducting, and follow-up. The following is a list of basic actions that the DFO should consider in meeting preparation, conducting, and follow-up:

a. Determine whether the meeting will be opened, closed, or partially-closed. If closed or partially-closed, obtain approval from the OGC and the Administrator at least 30 calendar days prior to the meeting date.

(1) Ensure a registration table is posted just outside the meeting room for relevant hand-outs and sign-in to capture meeting attendance.

(2) Draft meeting minutes immediately after the meeting. Request the chairperson certify the meeting minutes within 90 days after the related meeting. This applies to both open public and closed meetings.

b. Determine whether the meeting will be held face-to-face, virtually, or a combination of both. Regardless of the forum, ensure it is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities.

(1) The DFO must be present at all committee and subcommittee meetings. Each subcommittee shall have a full-time or part-time Federal employee in attendance. If simultaneous subcommittee meetings are held, the DFO will assign a "stand-in DFO" to attend in his behalf. The stand-in DFO will capture subcommittee meeting minutes and submit the DFO via email within 1 business day at the conclusion.

(2) Make the meeting minutes available to the general public immediately after the chairperson certifies. Post the meeting minutes to the committee website and upload to the FACA.gov database.

c. Determine the meeting time, taking the various time zones into consideration when the meeting is held virtually.

(1) The DFO should perform introductions and provide administrative details (e.g. restrooms, rules of the meeting, evacuation plan) at the start of the meeting.

(2) Send meeting materials to non-attending members, preferably in electronic form.

d. Determine the location of meeting. If it is a face-to-face meeting, try to find government space at no cost. If a face-to-face meeting is necessary, consider holding the meeting in a region where the majority of the members are located in order to avoid extraneous travel expenses.

(1) Ensure that someone is designated to take detailed minutes. Even if meeting transcripts are created, meeting minutes are still required.

(2) If applicable, post transcripts on committee website. Note: If meeting minutes are taken and posted, there is no need to post a transcript on the website.

e. For in-person and face-to-face meetings, ensure the room has adequate table space for members, adequate space for public participation, adequate lighting, good acoustics if using a sound system, and that any equipment to be used is functioning properly.

(1) The DFO should sit next to the chairperson in order to confer.

(2) Follow-up on assignments to committee members, leading to final reports.

f. Determine whether use of transcript services are needed.

(1) The DFO may need to chair the meeting in the chairperson's absence.

(2) Arrange for reimbursement of any allowable travel expenses to committee members and support staff.

g. Provide a detailed agenda and all related meeting materials to committee members well in advance of the meeting to allow for adequate review. It is a best practice to post materials given to, and received by, the committee to the committee website for public access. Adhere to the scheduled meeting agenda.

h. Invite guest speakers, if applicable. Keep accurate records of the committee's deliberations, discussions, and proceedings; and record motions and votes on each item of business.

i. Allow adequate time for speaker and public presentations; and provide the opportunity for public participation. The DFO may authorize the early adjournment of any committee meeting if the adjournment is in the best interest of the Government, or not considered to be in the public's interest.

j. Maintain a list of persons and organizations that have requested meeting notifications and notify them in advance of the meeting.

k. Publish the required meeting notice in the *Federal Register* 15 calendar days prior to the meeting date. If the meeting is closed or partially-closed, cite the specific exemption of the Government in the Sunshine Act.

l. Advertise the meeting (e.g. committee web site, mailing lists, list serves).

m. Ensure any logistical and travel arrangements are made for committee members and support staff.

CHAPTER 5. COSTS

1. Advisory committee costs. Tracking the costs associated with the maintenance and operation of an advisory committee is very important and is required to be reported at the end of each fiscal year. The DFO must track all costs and ensure the costs are accurately reported in the FACA.gov database.

2. Direct costs. The types of costs to be tracked include, but are not limited to:

a. Personnel Payments to non-Federal members. Government funds that are paid to advisory committee members, who are not Federal employees. Note: It is GSA policy not to compensate advisory committee members.

b. Travel expenses to non-Federal members, Federal members (SGE, RGE, and Ex Officio), Federal staff, and non-member consultants. Includes transportation, per diem (lodging, meals and incidentals), ground transportation, miscellaneous, etc.

c. Other expenses. Examples include: *Federal Register* notices, teleconferencing or virtual meeting charges, interpreters, transcripts, supplies/materials, any contractor expenses, etc.

3. Indirect costs.

a. Personnel payments to Federal members. This is the estimate of all the Federal members (RGE and Ex Officio) prorated time spent conducting advisory committee business, which is the value of the combined salary (including benefits).

b. Personnel payments to Federal staff. This is the estimate of the prorated time of all Federal staff (including the DFO) spent supporting the advisory committee, which is the value of the combined salary (including benefits). The CMO value should not be included.

4. Federal staff support years. This is the total of the full-time equivalent (FTE) count supporting the committee's activities, to the nearest tenth (e.g., **2.3**). There should be a direct comparable relationship in fiscal value between the "Federal staff support years" and "personnel payments to Federal staff."

CHAPTER 6. RECORDS

1. Advisory committee records. All documents, reports, or other materials prepared by, or for, the advisory committee are considered property of the Federal Government and are subject to the requirements of the Federal Records Act, 44 U.S.C. 3301, et.seq. Committee and subcommittee records must be handled in accordance with the General Records Schedule 6.2, "Federal Advisory Committee Records". If the records are deemed Presidential, they must be handled in accordance with the Presidential Records Act (PRA). Note: Even if a committee type is Presidential, it does not necessarily mean the records for that committee need to follow the PRA. Check with the CMO to verify recordkeeping requirements for each advisory committee. At a minimum, the following records shall be maintained by the:

a. Committee Management Officer (CMO).

(1) Establishment, re-establishment, or renewal documents (approvals and charters);

(2) Membership approvals and lists;

(3) Copies of letters for filing charters with the Congressional standing committees and the Library of Congress; and

(4) *Federal Register* notices.

b. Designated Federal Officer (DFO). All of the CMO records, including:

(1) Travel and other cost;

(2) Meeting agendas, briefing books, meeting minutes, transcripts, testimonies;

(3) Video recordings, if not fully transcribed;

(4) Reports;

(5) Substantive records relating to research studies and other projects, including unpublished studies and reports and substantive research materials (this may include electronic data);

(6) Questionnaires, surveys and other raw data accumulated in connection with research studies and other projects where the information has been consolidated or aggregated in analyses, reports, or studies (this may include data maintained electronically);

(7) Documentation of subcommittees, working groups, or other subgroups of advisory committees, that support their reports and recommendations to the full or parent committee. This documentation may include, but is not limited to minutes, transcripts, reports, correspondence, briefing materials, and other related records;

(8) Social media tools and emails, if substantive in nature (i.e. documents pertaining to the decision making process);

(9) Public affairs files, such as news releases, speeches, and formal photographs; and

(10) Any other pertinent committee or subcommittee documents.

2. Committee web page. The DFO shall ensure that a public committee web page is created and maintained and that all relevant documents are posted, such as committee charters, membership balance plans, *Federal Register* meeting notices, meeting agendas, comments submitted by the public, meeting minutes, committee reports, and other relevant committee and subcommittee documents.

3. Public availability. The FACA requires that advisory committees make their records, reports and other documents and materials available for public inspection and copying until the advisory committee ceases to exist. Committee records must be made available for public inspection and copying at a single location, either in the offices of the advisory committee, or in a GSA office to which the advisory committee reports. The public does not need to submit a FOIA request to access Federal advisory committee records.

Appendix A. Preparing Federal Advisory Committee Charters

Federal advisory committee charters must 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 other appropriate sources, and ensuring transparency and clarity.

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 but improve the overall charter and provide valuable additional information for interested parties. The 15 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 26, Item 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.

Appendix B. Preparing Federal Advisory Committee Membership Balance Plans

The Membership Balance Plan (MBP) 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 a Federal advisory committee is established. The plan should be updated or reaffirmed 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. A MBP template is available from the CMO; however, the elements of a MBP must 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 consider identifying 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 MBP was initially prepared, along with the date(s) the Plan is updated. This is not the date the charter consultation is held with the Secretariat.

Appendix C. Terms and Definitions

1. Administrator. “Administrator” shall mean the head of GSA.
2. Advisory committee. Any committee, board, commission, council, conference, panel, task force, or similar group, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of an agency official’s responsibilities. An advisory committee has at least one member who is not a full-time or permanent part-time officer or employee of the Federal Government. Unless a statute or the President provides otherwise, the functions of advisory committees shall be advisory only.
3. Approving official. The official having authority to establish, modify, renew, or terminate advisory committees; and to appoint members to, or remove members from advisory committees. For GSA advisory committees, the Administrator is the approving official unless otherwise provided by statute or Presidential directive.
4. Chairperson. The individual appointed or otherwise designated to preside over advisory committee meetings and direct the advisory committee's efforts in the effective completion of its assigned tasks. A GSA employee cannot serve as a chairperson on a GSA Federal advisory committee.
5. Charter. A legal document that specifies the committee’s mission or charge, membership composition, and general characteristics. A group may not hold official meetings, nor conduct official business as an advisory committee until the Charter is filed by the Committee Management Officer. The Committee Management Officer can provide guidance on developing charters (and see Appendix A for the charter format/content).
6. Closed meeting. A meeting held to review, discuss, and deliberate confidential data and documents, which are prohibited from public disclosure. Under FACA, the meeting must meet one of the legal provisions under the Government in the Sunshine Act and receive official agency approval from the Office of the General Counsel in order to be properly closed.
7. Committee Management Officer (CMO). The individual designated with the responsibility for exercising control and supervision over policies and procedures for management of the GSA’s Federal advisory committees. The GSA CMO is required to take governmentwide FACA training.
8. Committee Management Secretariat (Secretariat). The office established pursuant to section 7(a) of FACA and responsible for all matters relating to Federal advisory committees. The Secretariat is located within GSA and carries out the responsibilities of the Administrator under FACA and Executive Order 12024.

9. Designated Federal Officer (DFO). The full-time or permanent part-time GSA employee designated for each advisory committee and subcommittee with the responsibility to carry out the provisions of sections 10(e) and (f) of FACA, 41 CFR §102-3.120, and to comply with GSA advisory committee procedures. The DFO is responsible for the committee's overall management and administrative matters; day to day operations; serves as the liaison between GSA and the committee; and is required to be present at all committee and subcommittee meetings. DFO designations shall be made in writing by the appropriate Staff Office, Service, or Region shall be provided to the CMO. Every GSA DFO is required to enroll in governmentwide FACA training as soon as they are designated as a DFO if they haven't taken the training in the past two years.

10. FACA Database (FACA.gov). This online system is used by Federal agencies to continuously report Federal advisory committee data governmentwide. It is also used by the Congress to perform oversight of related executive branch programs, and by the public, the media, and others, and to stay abreast of important developments resulting from advisory committee activities. DFOs are responsible for ensuring that the data in the FACA database for their respective committees is current at all times.

11. Federal Register notice. A legal notice published in the *Federal Register* to inform the public of meetings of Federal advisory committees, the establishment of new committees, solicit for potential committee members, or to provide other information.

12. Federal advisory committee member. An individual who serves by appointment or invitation on an advisory committee or subcommittee. Refer to Chapter 3 for types of member designations.

13. Membership Balance Plan (MBP). GSA Federal Advisory Committees are required to develop a MBP which provides a description of their plan to attain fairly balanced membership for committees being established, renewed, or reestablished within the agency. 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. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed. Check with the CMO for Secretariat guidance on developing MBPs (and see Appendix B for MBP format/content).

14. Subcommittee. A subgroup of a Federal advisory committee which reports to a parent advisory committee and not directly to a Federal official or agency, whether or not the subcommittee's members are drawn in whole or in part from the parent advisory committee. GSA's policy is that subcommittee meetings are required to be announced in the *Federal Register* 15 calendar days prior to the meeting, and are subject to the FACA requirements.

15. Utilized. The employ of advisory committee subject to the FACA ACT or by other statutes, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by the President or by the Administrator, for the purpose of obtaining information or advice or recommendation for the President or on issues or policies within the scope of the GSA's mission and scope of official responsibility.

Appendix D. Laws, Executive Orders, and Regulations

1. FACA, 5 U.S.C. App. This law was passed on October 6, 1972. Due to the numerous groups advising the Federal Government, Congress decided to establish a system to govern the creation, operation, and termination of advisory committees in the executive branch of the Federal Government. Specifically, Congress determined that the need for many existing committees had not been reviewed; new committees should be established only when determined to be essential; committees should be terminated when they are no longer needed; there should be standard and uniform procedures governing the operation of committees; Congress and the public should be kept informed of the number, purpose, membership activities, and costs of advisory committees; and the function of advisory committees should be advisory only. In order to accomplish this, the FACA outlines general responsibilities of Federal officials involved with committee management and broad guidelines for the operation of advisory committees.
2. Government in the Sunshine Act, 5 U.S.C. § 552b. The purpose of the Act is to provide information regarding the decision-making process of the Federal Government to the public. In one section of the Act, exemptions are listed that allow Federal advisory committee meetings to be closed or partially closed to the public.
3. Privacy Act, 5 U.S.C. § 552a. Congress found that in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it was necessary to regulate the collection, maintenance, use, and dissemination of information collected by such agencies. The purpose of the Privacy Act is to provide safeguards for an individual against an invasion of personal privacy. Records of members of advisory committees are subject to the Privacy Act.
4. Freedom of Information Act (FOIA), 5 U.S.C. § 552. The FOIA sets standards for determining which records held by Government agencies must be made available to the public and which records may be withheld. Although, Federal advisory committee records may be withheld under FOIA's provisions if there is a reasonable expectation that the records sought fall within the exemptions of 5 U.S.C. 552(b), most Federal advisory committee records do not fall under this exemption. A member of the public does not need to submit a FOIA request to obtain Federal advisory committee records.
5. FACA Final Rule, Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3. The Final Rule, issued by the Secretariat, provides interpretive guidelines for the FACA.
6. Executive Order 12024. Signed by President Jimmy Carter on November 20, 1977, transferred certain functions under the FACA, as amended, from the Office of Management and Budget to the GSA.

7. Executive Order 12838. Signed by President Clinton on February 10, 1993, it ordered the reduction of Federal advisory committees within the executive branch and limited the establishment of new committees.

8. Office of Management and Budget (OMB) Circular A-135 “Management of Federal Advisory Committees,” dated October 5, 1994. OMB Circular A-135 provides guidance and instructions on the management of Federal advisory committees and requires executive departments and agencies to establish a committee planning and review process. The circular reinforces the Clinton Administration’s decision to reduce the number of advisory committees and cut costs, determines the criteria GSA is to use when evaluating the utility of existing advisory bodies, and requires GSA to create a variety of operating and reporting guidelines for advisory committees.

9. Unfunded Mandates Reform Act (UMRA), 2 USC §1501 et seq. UMRA provides a critical exemption to FACA in promoting the free communication between the Federal Government and State, local, and tribal governments. For the UMRA exemption to apply to meetings between Federal and State, local, and tribal officials, the meeting must meet the following two conditions:

a. Meetings are held exclusively between Federal officials and “elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities”; and

b. Such meetings are solely for the purpose of exchanging 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.”

10. Guidance on appointment of lobbyists to Federal boards and commissions. On June 18, 2010, President Obama issued a “Lobbyists on Agency Boards and Commissions” memorandum prohibiting the appointment and reappointment of Federally-registered lobbyists to committees (including Federal advisory committees) and other boards and commissions. The final OMB guidance on implementing this policy was published in the *Federal Register* on October 5, 2011, and revised on August 4, 2014, as a series of questions and answers to executive departments and agencies concerning the appointment of Federally-registered lobbyists to boards and commissions.

Appendix E. Roles and Responsibilities

Roles and responsibilities for GSA advisory committees are:

1. Administrator.

- a. Ensures advisory committee staff and members comply with FACA and the Final Rule.
- b. Approves charters for the establishment and reestablishment, renewal, or modification of all GSA Federal advisory committees.
- c. Approves and appoints members to GSA advisory committees, except those members who are appointed by the President.
- d. Approves written determinations stating the reasons for closing part of or all of an advisory committee meeting to the public in accordance with the criteria provided in the Government in the Sunshine Act, 5 U.S.C. 552b(c).
- e. Is responsible for ensuring a GSA Committee Management Officer is designated. Issues administrative guidelines and management controls that apply to all of the GSA advisory committees subject to the Act.
- f. Reviews, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee.
- g. Determines that levels of agency support are adequate for every GSA Federal advisory committee.
- h. Develops procedures to assure that the advice or recommendations of advisory committees are not inappropriately influenced by the appointing authority or by any special interest, but are the result of the advisory committee's independent judgment.
- i. Provides the opportunity for reasonable participation by the public in advisory committee activities, subject to 41 CFR § 102-3.140 and this order.

2. Head of Services and Staff Offices (HSSO) and Regional Administrators (RA).

- a. Provides oversight for committees within their purview and ensures that their DFOs are coordinating closely with the CMO for guidance on the establishment, renewal, operation, management, and termination of those Federal advisory committees.

b. Designates a DFO to each committee and subcommittee within their purview. A trained alternate DFO should also be appointed to assist the committee DFO, or to assume the duties of the DFO, when necessary.

c. Is part of the routing to approve charters, membership balance plans, and membership nomination packages?

d. Ensures that *Federal Register* notices announcing Federal advisory committee and subcommittee meetings are published per the requirements of the FACA Final Rule.

3. Office of General Counsel (OGC).

a. Provides legal assistance and advice concerning applicability of, and compliance with, FACA and related statutes to GSA Federal advisory committees.

b. Reviews and concurs on: advisory committee proposals on the establishment, reestablishment, or renewal of GSA advisory committees; charters and membership balance plans; amendments to advisory committee charters; membership of GSA advisory committees, with special attention to balance reviews; and determinations to close all or part of an advisory committee meeting.

c. Assists the DFO to determine advisory committee member designations, and ensures that all applicable ethics and conflicts of interest requirements are carried out for members of each GSA Federal advisory committee

d. Makes legal determinations on the applicability of FACA to groups created, managed, or controlled by GSA.

4. Committee Management Officer (CMO).

a. The CMO implements provisions of section 8(b) of FACA; carries out all responsibilities delegated by the Administrator; ensures that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping, such as: charter and membership documentation; annual comprehensive reviews; GSA FACA guidelines; and closed meeting determinations. The CMO is responsible for implementing and exercising control and supervision over policies and procedures for the management of GSA Federal advisory committees. The CMO must attend governmentwide FACA training.

b. Provides FACA advice and guidance to GSA Federal advisory committee staff. This includes determining the authority for each GSA Federal advisory committee.

c. Reviews advisory committee action documents, such as Federal advisory committee establishment and renewal packages, charters, membership balance plans, and *Federal Register* notices establishing and renewing Federal advisory committees.

d. Consulting with the Secretariat on the establishment, renewal, or termination of GSA Federal advisory committees.

e. Ensures that all GSA Federal advisory committee charters are filed with the standing committees of Congress, the Library of Congress, the Administrator, and the Secretariat.

f. Maintaining copies of relevant documents and records for each GSA Federal advisory committee.

g. Overseeing the Annual Comprehensive Review of GSA Federal advisory committee activities and ensuring that the DFO's comply with the Secretariat's reporting requirements. This includes annually certifying the data reported to the Secretariat on each GSA Federal advisory committee.

5. Committee Management Secretariat (Secretariat).

a. The Secretariat is responsible for oversight of the government-wide FACA program.

b. Issues policy guidance to Federal agencies for establishing, operating, and terminating Federal advisory committees.

c. Maintains the FACA database.

d. Develops and distributes FACA government-wide training.

e. Supports the CMO and the FACA Attorney interagency councils.

f. Develops and publishes the regulations that implement FACA.

g. Provides policy advice regarding FACA and its implementing regulations, and best practice guidance to Federal agencies.

h. Performs charter and MBP consultations and provides advice to agency CMOs concerning compliance on the documents to FACA and its implementing regulations.

i. Performs the Annual Comprehensive Review of all Federal advisory committees government-wide

6. Designated Federal Officer (DFO).

a. A DFO must be designated for every GSA Federal advisory committee and subcommittee. The DFO plays a critical role in the operation of a Federal advisory committee and is responsible for a committee's day to day operation. A DFO must be trained, and is required to attend the government-wide FACA Management training

course administered by the Secretariat. Effective DFOs have strong communication and inter-personal skills, are highly organized, pay attention to details, and exhibit leadership qualities.

b. Ensures his/her Federal advisory committee activities comply with FACA, the FACA Final Rule, and this order.

c. Packages and routes for approval by the Administrator, advisory committee establishment, re-establishment or renewal charters. The CMO and OGC must review and provide concurrence.

d. Develops a MBP for each applicable Federal advisory committee and ensures that the MBPs are routed through the CMO and OGC for review and concurrence prior to finalization.

e. Prepares justifications and recommendations for advisory committee membership appointments, reappointments, and/or removal for approval by the Administrator.

f. Prepares membership invitation, reappointment, and thank you letters for approval by the Administrator.

g. Ensures any travel arrangements are made and that advisory committee members are reimbursed timely.

h. Monitors the attendance and participation of advisory committee members and recommends to the Administrator replacing any member who has missed a certain number of scheduled committee meetings and/or does not, in the opinion of the DFO and the GSA senior staff, appear to demonstrate a sufficient degree of interest in the activities of the committee.

i. Schedules and approves all committee and subcommittee meetings and agendas. This doesn't apply to Presidential advisory committees.

j. Prepares for publishing, per the FACA Final Rule, all *Federal Register* notices of committee establishments, renewals, modifications; and open, closed or partially-closed meetings.

k. Prepares written determinations for approval by the Administrator for closing part of or all of an advisory committee meeting to the public in accordance with the criteria provided in the Government in the Sunshine Act, 5 U.S.C. §552b(c).

l. Holds meetings that are reasonably accessible and in meeting rooms large enough to accommodate the public. Ensures meeting space is readily accessible to and usable by persons with disabilities. Ensures that any advisory committee meeting conducted in whole or part by teleconference, videoconference, the internet, or other

electronic medium is reasonably accessible to the public and usable by persons with disabilities.

m. Provides an opportunity for appropriate public participation and comments at advisory committee meetings.

n. Attends all committee and subcommittee meetings for their entirety.

o. Adjourns a meeting when it is determined to be in the best interest of the public to do so.

p. Ensures detailed minutes are prepared and certified for accuracy by the Chairperson within 90 calendar days of the meeting to which they relate. This applies to each advisory committee meeting, including meetings that are closed or partially-closed to the public.

q. Develops advisory committee by-laws and ensures that the by-laws are routed through the CMO and OGC for review and concurrence prior to adoption by the full committee.

r. Maintains an ongoing interface with the committee members and agency program officials the Federal advisory committee supports.

s. Creates and maintains a public web page for the Federal advisory committee.

t. Monitors and tracks the financial resources that support the committee.

u. Maintains (in accordance with General Records Schedule 26, Item 2 and other approved GSA records disposition schedule) all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, videos, or other documents that were available to or prepared for or by the advisory committee and subcommittees (until the committee ceases to exist), and makes them available for public inspection and copying. After the committee's work ends, disposes in accordance with Federal records, statutes, and regulations.

v. Prepares the Annual Report on Closed Meetings for the advisory committee, as applicable.

w. Tracks and records the disposition of reports and recommendations made by the advisory committee and advises the advisory committee of the agency's action on the recommendations.

x. Continuously maintains current and accurate data in the FACA database on their advisory committee(s) as required for the Annual Comprehensive Review.

7. Chairperson.

a. The chairperson plays a critical role in coordinating with the DFO and the committee members. The chairperson serves several roles, including: committee leader, facilitator, team/consensus builder; liaison between the committee and the DFO; manager of committee activities (including meetings) and timelines; key developer and integrator of committee work products; and is generally the spokesperson for the committee.

b. Presides at advisory committee and subcommittee meetings.

c. Directs/manages the work of the committee or subcommittee during and in-between committee meetings.

d. Works closely with the DFO to ensure committee activities conform to FACA requirements.

e. Certifies the accuracy of the minutes for each meeting within 90 calendar days to which the meeting relates.

f. Advises the public at the beginning of each meeting about the committee's rules on public participation.

g. Conducts each meeting in accordance with the approved agenda.

h. Facilitates committee member discussions to maintain focus on areas relevant to accomplishing the agenda and keeps members engaged.

i. Determines when comments are not germane, when it's time to end the discussion, when a topic should be assigned to a subgroup for further consideration, or when discussions should be tabled until the next meeting.

j. Coordinates how work products of the committee are organized, generated, and transmitted to GSA.

Appendix F. Reports

The types of reports relating to GSA advisory committees are:

1. Annual report of closed or partially-closed meetings. Each DFO is responsible for ensuring that all Federal advisory committees issue a written annual report when an entire or portion of a meeting is closed to the public, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b). The report must be filed with the Library of Congress.
2. Annual comprehensive review of Federal advisory committees. At the end of each fiscal year, the Secretariat, in conjunction with each department/agency with a FACA program, conducts an annual review of the activities of all advisory committees. The Secretariat conducts the review using the FACA.gov that DFOs update throughout the year. The CMO will provide due dates and instructions to the DFOs for completion and close out of the data required for the review. After the DFO completes their update, the CMO reviews and verifies the data for accuracy.
3. Filing of advisory committee reports with the Library of Congress. Section 13 of FACA requires that all reports issued by advisory committees be filed with the Library of Congress. For archival purposes, the Library of Congress requires paper copies of reports and other documents. It is GSA policy that the DFO is responsible for filing eight copies of each advisory committee report with the Library of Congress.
4. Follow-up reports for Presidential advisory committees. Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report to Congress detailing the disposition of the advisory committee's recommendations is required. Consult with the CMO for guidance.