**Preparing Federal Advisory Committee Charters**

**GSA Committee Management Secretariat Guidance**

# Introduction:

The Federal Advisory Committee Act (FACA or “the Act”), as amended, 5 U.S.C. 1001 *et seq.*, and the implementing regulations in the FACA Final Rule (41 CFR 102-3) provide the basis for and guidance concerning the management and operation of Federal advisory committees (“advisory committee” or “FAC”) in the executive branch. Filing the charter marks the formal establishment of an advisory committee.

To ensure statutory and regulatory charter requirements are met, this guidance document provides a combination of:

* Interpretation of the Act
* Elaboration on the regulatory language in the FACA implementing regulation
* Guidance for writing effective and compliant advisory committee charters
* Frequently asked questions
* Best practice considerations

All Federal advisory committees, regardless of establishment authority, must file a charter with the appropriate entities before they can conduct business. Depending on the authority, the relevant filing date will be the date the charter is filed with Congress or the Committee Management Secretariat (CMS). A charter must contain certain components and requires specific approval and filing.

This guidance addresses questions from the community regarding the appropriate level of detail to provide in each component of the charter.

Agency staff or Designated Federal Officers (DFOs) who may be tasked with preparing an advisory committee charter should first contact the agency Committee Management Officer (CMO) for advice and guidance. CMOs can reach out to their assigned CMS Desk Officer for additional advice and guidance.

# Format and Content of an Advisory Committee Charter:

A charter is intended to provide a description of a Federal advisory committee’s mission, goals, objectives, and how the advisory committee will be managed. The operating procedures of the advisory committee, such as how advisory committee members will vote on work products, should not be included in the charter and instead be included in the advisory committee bylaws.

As cited in 41 CFR § 102-3.75 of the FACA Final Rule, **the charter must contain the following 15 sections:**

1. **Advisory Committee’s Official Designation.** Provide the advisory committee’s exact official name, consistent with the authority.
2. **Authority.** Provide the authority for the establishment, renewal, reestablishment, amendment, or merger of the advisory committee (e.g., cite the statute, Executive Order or other Presidential directive, or note the advisory committee is agency authority) and reference the advisory committee is being established, renewed, reestablished, or merged (or a charter is being amended) in accordance with the provisions of FACA.
3. **Objectives and Scope of Activities.** State the overall purpose and parameters of the advisory committee’s mission or charge and describe the committee’s goal(s). See an example in the section, *Frequently Asked Questions and Best Practice Considerations*.
4. **Description of Duties.** Detail the responsibilities for which the advisory committee is assigned and specify the authority for any non-advisory functions. Advisory committee duties must be specified as solely advisory in nature in the absence of specific statutory authority or Presidential directive to the contrary. See an example in the section, *Frequently Asked Questions and Best Practice Considerations*.

**5.**  **Agency or Federal Officer Receiving the Advisory Committee’s Advice/Recommendations.** Consistent with the advisory committee’s authority, identify the agency or official, by title or position, to whom the advisory committee submits its recommendations or advice. Normally, this is the agency head.

**6. Support.** Identify the agency and component/office responsible for providing the necessary support for the advisory committee. For Presidential advisory committees, also include who (i.e. the President or the President’s delegate) is responsible for fulfilling the Congressional reporting requirements of *§* 6(b) of the Act (codified at 5 U.S.C. 1005(b)), if appropriate.

1. **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). These figures should be consistent with the data reported in the FACA database.
2. **Designated Federal Officer (DFO).** State the agency head must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, and the DFO must:
3. Ensure their advisory committee activities comply with the Act, FACA Final Rule, their agency administrative procedures, and any other applicable laws and regulations;
4. Approve or call all meetings of the advisory committee or subcommittee;
5. Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;
6. Attend all advisory committee and subcommittee meetings for their duration;
7. Fulfill the requirements under *§* 10(b) of the Act (codified at 5 U.S.C. 1009(b));
8. Adjourn any meeting when the DFO determines it to be in the public interest;
9. Chair any meeting when so directed by the agency head;
10. Maintain information on advisory committee activities and provide such information to the public, as applicable; and
11. Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (*e.g.,* FACA overview, ethics training) for efficient operation and compliance with the Act and FACA Final Rule.

Also, the DFO **should** ensure a public facing website is created and maintained for the advisory committee to which they are assigned according to 41 CFR § 102-3.120(b).

1. **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” or “at a minimum of twice per year”) the meetings will occur. The advisory committee needs to follow the requirements stated in the statute or Presidential directive, if applicable.
2. **Duration.** State the period of time anticipated for the advisory committee to carry out its purposes. If the duration is expected to continue beyond the typical two-year period, the recommended language to include in this section is, “The duration of the advisory committee is continuing, subject to the Termination section below.”
3. **Termination.** Provide the advisory committee’s planned termination date, if less than two years from the date of the advisory committee’s establishment. For advisory committees established by the President and included in the biennial Continuation Executive Order (EO), the recommended language to include in this section is “Unless continued by the President, the advisory committee will terminate on *[insert the date the committee has been continued until, as stated in the most recent Continuation EO]*, consistent with *[insert the most recent Continuation EO number and issue date]*.”
4. **Membership and Designation.** Provide the estimated total number of members, a description of the expertise or experience required, and/or groups to be represented in order to achieve a fairly balanced membership. Clearly state whether the advisory committee will or may be composed of Special Government Employees (SGEs), Representative members, Regular Government Employees (RGEs), or members from several categories.

State who the appointing authority is for the members, including the Chairperson (and Co-Chairperson or Vice Chairperson, if applicable) and specify whether members serve at the discretion of the appointing authority or are required by statutory or Presidential directive. If a membership balance plan has been created for this advisory committee, please reference it in this section. For more information, see the*Membership Balance Plan Guidance.*

1. **Subcommittees.** State who in the agency has the authority to create subcommittees and state that subcommittees must report back to the parent committee, and must not provide advice or work products directly to the agency or any other Federal officer.
2. **Recordkeeping.** State the records of the committee and subcommittees shall be handled in accordance with the General Records Schedule 6.2, Presidential Records Act, or other approved agency records disposition schedule. Also state these records shall be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.
3. **Filing Date.** Add the date the charter is filed with Congress, the standing committees of the Senate and the House of Representatives having legislative jurisdiction over the agency, unless the advisory committee is a Presidential advisory committee. For a Presidential advisory committee add the date the charter is filed with CMS. See *Charter Filing Requirements* section for more details.

# Consultation with GSA:

Agencies are required to consult with CMS when they establish, renew, reestablish, or merge a discretionary advisory committee, or when they make amendments to an existing discretionary advisory committee charter. For non-discretionary advisory committees, agencies are not required to consult with CMS; however, it is highly encouraged to take advantage of CMS’ expertise (and most agencies do). For more guidance, see the *Charter Consultation Flowchart* and 41 CFR § 102-3.60 of the FACA Final Rule.

# Public Notification Requirements:

A notice to the public in the *Federal Register* is required when a discretionary advisory committee is established, renewed, reestablished, or a new discretionary advisory committee is established as the result of a merger of existing advisory committees. Additional public notification methods are highly encouraged. For more guidance, see the *Charter Consultation Flowchart* and 41 CFR § 102-3.65 of the FACA Final Rule. Although a notice to the public in the *Federal Register* is generally not required for non-discretionary advisory committees, it is permissible and encouraged.

Notice to the public for non-discretionary advisory committees is only required for charter amendments not resulting from legislation or a Presidential directive; in this case agencies must either post an announcement and a copy of the charter amendment on the advisory committee website or publish a *Federal Register* notice.

# Charter Filing Requirements:

* No advisory committee may meet or take any action until a charter has been filed by the CMO.
* To amend, establish (including due to a merger), renew, or reestablish an advisory committee, a charter must be filed by the CMO with the agency head, congressional oversight committee(s), CMS, and the Library of Congress (LOC). The LOC prefers agencies to file via email using [FACA@LOC.gov](mailto:FACA@LOC.gov).
* To file the charter with the CMS, add the Charter Date to the Consultation and upload the Charter and MBP into the FACA database.
* The CMO should work within their agency to file the charter with the remaining entities.
* Charter filing requirements for a Presidential advisory committee are the same as those outlined above except the date of establishment, renewal, or reestablishment for a Presidential advisory committee is the date the charter is filed with CMS.

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# Frequently Asked Questions & Best Practice Considerations:

## Starting the Charter Process

**Who prepares the charter for a FAC?** This is an agency responsibility. The charter and related documents may be drafted by the DFO for the advisory committee. If the DFO is not yet designated, the charter may be drafted by staff of the office that will support the FAC. In some agencies, the CMO may be involved. CMS does not prepare agency FAC charters.

**May an agency engage with CMS for preliminary discussion during the development or preparation of a new charter and related documents?** Yes. CMS encourages informal coordination between the CMO and the CMS Desk Officer regarding the format and content of new FAC charters prior to the formal consultation.

**How long does it take for CMS to review the charter and related documents?** As a standard, CMS requires at least two weeks to review and provide comments on the charter and related documents. As the charter consultation is a back and forth process, agencies should incorporate the consultation process into the charter processing timeline. CMS Desk Officers are responsible for consulting with multiple agencies and hundreds of advisory committees. It is the CMO’s responsibility to factor in enough time for the consultation process to avoid rush requests. Urgent requests should be infrequent and not a result of avoidable administrative delays. When urgent requests are necessary, CMOs must alert the CMS Desk Officer as soon as possible and they will do their best to accommodate an accelerated timeline.

## Developing the Charter

**What should be included** **in the charter and how long is a typical charter?** There are 15 components that must be incorporated into a FAC charter, which are detailed above in the Format and Content of an Advisory Committee Charter section. Typically, this will require about two or three pages. Agencies should avoid including information that is more appropriate for a FAC’s bylaws, such as how a FAC member will be appointed or reappointed.

**What is an “explanation of need & lack of duplication of resources” for a discretionary FAC and when are they required?** These explanations should:

* Provide a robust explanation of why the FAC is essential to the conduct of agency business and in the public interest;
* Explain why the advice cannot be obtained through another mechanism;
* Explain why it is necessary to merge one or more FACs, as applicable; and
* Confirm the work of the FAC does not duplicate existing work for every new establishment/reestablishment/merger.

These explanations should be reaffirmed (and revised as needed) during charter renewals. The explanation of need is an important part of the documentation provided to CMS during the consultation process, and one sentence stating a FAC is needed is not sufficient.

CMOs need to enter the explanations on the Consultation page in the CMO Remarks fieldin the FACA database. Since the public does not see these explanations on the Consultation page, they also need to be captured in either or both of the fields under the Recommendation/Justifications section that address “Why advice can't be obtained elsewhere?” and “Recommendation Remarks.”

For charter renewals and amendments, CMOs should either reaffirm the explanation of need has not changed for the advisory committee or provide a revised explanation during the consultation process and update the relevant sections and fields (i.e., Consultation and Recommendation/Justifications) in the FACA database.

**Should a charter contain language that prescribes behavior of advisory committee members?** No. The charter sets parameters for the advisory committee as an entity, and should not set behavior for specific individuals (e.g., guidance on ethics). Such language is best conveyed in appointment letters and FAC bylaws, which CMS highly recommends.

**What is an example of language for the Objectives and Scope of Activities charter section?**

*The [insert FAC name] shall provide independent advice and recommendations on how to improve the effectiveness and management of [insert subject area] matters to improve XX program.*

**What is an example for language for the Description of Duties charter section**?

*The duties of the [insert name of FAC] are solely advisory and shall include providing advice and recommendations on:*

*(i) What is needed for the development, implementation, and coordination of educational programs and initiatives at the [XX Department] to improve educational opportunities and outcomes for XX;*

*(ii) How to promote career pathways for in-demand jobs for XX students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives;*

*(iii) Ways to strengthen the capacity of XX institutions in XX areas; and*

*(iv) How to increase public awareness of and generate solutions for the educational and training challenges that XX students face and the causes of these challenges.*

*The [insert name of FAC] will submit a report to Congress as required by [insert the statute] on [insert the relevant topics] every other year.*

## What materials should be sent to your CMS Desk Officer to initiate the consultation?

CMOs must send the following information:

* **Background information.** This could include the charter renewal timeline (noting that CMS requires at least two weeks to review and provide comments on charter packages).
* **Advisory Committee charter.** If it is a renewal, reestablishment, amendment or merger, include a redline version showing all changes/comments, as appropriate.
* **Most recently filed charter** (or charters if it is a merger), as applicable.
* **Explanation of need & lack of duplication of resources.** These explanations are typically provided to the CMS Desk Officer together in the form of one to several paragraphs. They are required for a discretionary advisory committee charter

establishment (including due to merger), renewal, and reestablishment. See more details in the *Developing the Charter* section.

* **Advisory Committee authority.** This may be an agency memo, statute, or Presidential directive.
* **Membership Balance Plan.** It is required for discretionary advisory committees and considered as a best practice for non-discretionary advisory committees. See Membership Balance Plan Guidance.

## Filing the Charter

**Does a charter have to be signed by the agency head?** No. An approval signature is not required under the Act or the FACA Final Rule. However, some agencies do have the agency head sign the charter as part of their agency administrative procedures.

**Are the charter filing requirements the same for every FAC?** Yes. The charter filing requirements are the same. However, the filing date for Presidential advisory committees is based on the date a charter is filed with CMS, not the date filed with Congressional oversight committees.

## Subcommittees

**Are subcommittees required to file a charter?** No, since asubcommittee is a subgroup of an advisory committee and operates under the parent advisory committee’s charter. However, if a subcommittee reports directly to a Federal officer or agency, at that point it is no longer functioning as a subcommittee and must be chartered as a new advisory committee; it must comply with the requirements of FACA and the FACA Final Rule; and will be counted as a chartered advisory committee at an agency.

## Charter Amendments

**How are charter amendments accomplished?** The agency head is responsible for amending the charter of a FAC. The procedures for making changes and filing amended charters will depend upon the authority for the advisory committee, but include consulting with CMS as appropriate, filing the amended charter, and public notification. See the *Charter Consultation Flowchart* for further details.

**Is public notification required for charter amendments?** Yes. For discretionary advisory committees agencies must post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the agency must publish a notice of amendment in the *Federal Register*. *Federal Register* notice publishing or website posting of charter amendments may be performed concurrently with the filing of the charter. The website posting or publishing requirement in the *Federal Register* does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

**Does amending a charter change the renewal date?** No. Amending an existing advisory committee charter does not constitute renewal of the FAC and has no impact on the charter duration— in most cases, FAC charter renewals occur every two years.

# FACA References

Current statutory requirements for a FAC charter are identified in 5 U.S.C. 1008(c)(2)and are repeated in the FACA Final Rule under 41 CFR §§ 102-3.70, 102-3.75, and 102-3.80. For additional guidance see the following:

* [**The Federal Advisory Committee Act (FACA)**](https://uscode.house.gov/view.xhtml?path=/prelim@title5/part1/chapter10&edition=prelim)

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* [**FACA Final Rule (41 CFR Part 102-3)**](https://www.regulations.gov/document/GSA-FMR-2022-0015-0010)

https://www.regulations.gov/document/GSA-FMR-2022-0015-0010

* [**GSA FACA database**](https://www.facadatabase.gov/FACA/s/)

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* [**Committee Management Secretariat website**](https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management)

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Comments? Please send to [**CMS@GSA.gov**](mailto:cms@gsa.gov)**.**

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