



Key Principles and Practical Advice for Complying with the Federal Advisory Committee Act

November 2, 2011

The 1972 [Federal Advisory Committee Act](#) (FACA) is an important law passed to ensure citizen involvement in federal decisions is equitable, that no one individual or group has undue influence.

The simplest way to comply with FACA is to host only meetings with non-federal employees that are "open to all" and transparent. In addition, make clear to all participants that the agency, by law, must value insights from each individual and organization separately and equitably AND must not rely solely on any single individual or group perspective when making agency decisions. Doing this isn't always easy, so here are useful principles and best practices related to FACA compliance.

When Does FACA Apply?

- A federal agency must comply with FACA when it (1) establishes, utilizes,^{*} controls, or manages (2) a group with non-federal members[†] that (3) provides the agency with consensus advice or recommendations.
 - Only groups that meet all three of these legal elements are subject to FACA.
 - A definitive determination about whether FACA applies to a particular group is a fact-specific inquiry that generally requires consultation with the Office of General Counsel.
-

^{*} Under FACA, the term "utilize" does not have its ordinary meaning. Instead, FACA's regulations provide that an agency "utilizes" a group only when it exercises actual management or control over a group's operations. [41 C.F.R § 102-3.25](#).

[†] The Uniform Mandates Reform Act of 1995 provides a limited exemption from FACA for certain groups of federal employees and elected officers of state, local, and tribal governments (or their properly designated employees) acting in their official capacity. See [2 U.S.C. § 1534\(b\)](#).

Best Practices for Avoiding FACA Violations

- ✚ Help participants understand how to work with the Forest Service in a FACA-compliant manner;
- ✚ Ensure that Forest Service staff and external stakeholders understand what constitutes consensus advice or recommendations under FACA;
 - Individual group members can provide their own personal opinions, advice, or recommendations without implicating FACA.
 - This is true even if several individual members of a group provide similar or identical opinions, advice, or recommendations.
- ✚ Do not solicit consensus advice or recommendations from a group that was established, utilized, managed, or controlled by the Forest Service;
- ✚ Inform (orally and in writing) members of a group that was established, utilized, managed, or controlled by the Forest Service that the agency cannot obtain the group's consensus advice or recommendations without triggering FACA;
- ✚ Seek advice or recommendations from interested stakeholders only after making clear that the agency is not asking the group to reach consensus or to provide only consensus advice;
- ✚ Ensure that collaborative meetings are open to the public and properly advertised in advance;
- ✚ Keep detailed minutes of all collaborative meetings; and
- ✚ Make all records, reports, transcripts, minutes, and other information related to a collaborative group publicly available.

Resources and References:

- [FACA - Final Rule 2001](#) (GSA)
- [Partnership Guide - USDA Forest Service](#)
- [GSA – When FACA Applies and Not](#)
- [RedLodge Clearinghouse FACA section](#)
- [GSA – FACA Management Overview](#)
- [BLM FACA Guidance](#)
- [National Park Service Guide to FACA](#)
- [Collaboration and FACA at EPA](#)

