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## *The Federal Advisory Committee Act (FACA) and Collaboration\**

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**Issue:** Ensuring that collaborative planning activities are compliant with FACA

This document provides key principles and practical advice for complying with the [Federal Advisory Committee Act](#) (FACA, 5 USC App.) during collaborative planning activities. Congress passed FACA in 1972 as one of the federal government's Sunshine Laws that ensure agency decisions occur under the daylight of public review. Related laws include the [Freedom of Information Act](#) (FOIA, 5 USC 552) and [Privacy Act](#) (PA, 5 USC 552a).

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- ✦ **Seek information from individuals, not consensus from the group:** Group consensus is a 'red-flag' because it suggests the group is making a decision upon which the agency will act (NOTE: Seeking *information* from individuals about whether consensus exists among the individual participants and why is not the same as seeking *group consensus*).
- ✦ **Make all meeting notes, informational materials, and products publicly available:** Transparency is exceptionally important because it can offset any misperceptions.
- ✦ **Allow flexible participation:** Constant participation by the same individuals is a 'red-flag' because it suggests a closed group with a specific viewpoint.
- ✦ **Allow public review and comment on all products:** Establish opportunity for interested parties to add information and offer suggestions, thereby ensuring a public review of all group products prior to any agency decision or utilization of those products.
- ✦ **Avoid any appearance of 'substantial control' over the group:** Agency personnel contribute knowledge about technical informational and agency policy, including proper FACA compliance, but do not solely set the agenda or determine group membership.
- ✦ **Recognize that "utilize" has a special meaning under the FACA law:** "A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation" (41 CFR 102-3.25, definition of *utilized*).
- ✦ **Avoid establishing a group and seeking group advice or recommendations:** FACA applies when an agency establishes a group and does so with the purpose of obtaining advice or recommendations; it does not apply if the agency establishes a group to seek information from individual participants (41 CFR 102-3.25, definition of *advisory committee*).

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### 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](#)

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\* This document does not constitute—nor substitute for—legal guidance or advice. It has been prepared for informational purposes only and summarizes material from existing sources intended for general guidance. Consult your Office of General Council to clarify and confirm this guidance if you have specific questions.

