



# Federal Open Meetings Laws

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## Federal Advisory Committee Act

5 U.S.C. app. § 1-15  
(1972)

## Advisory Committees

- Concerns
  - Government waste
    - Number of committees (hundreds, with thousands of members)
    - Expenses (hundreds of millions of \$)
  - Special interests
    - Limited membership
    - Secrecy

## Examples

- President's Advisory Council on Faith-Based and Neighborhood Partnerships
- Presidential Economic Recovery Advisory Board

## FACA

- Passed in October 1972
- Special emphasis on
  - open meetings,
  - chartering,
  - public involvement, and
  - reporting
- Administered by GSA (General Services Administration)
  - per 1976 executive order

## FACA addresses waste by...

- Prohibition on new committees created unless authorized by president, statute, or by head of agency pursuant to specific findings
- Requirement of properly filed charter before any meetings can take place
- Time limit of two years on committee, with some extensions allowed

## FACA addresses special interests by...

- Membership requirements
  - “fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee”
- Limits on meetings
  - Approval of meeting and agenda
  - Federal official present and can adjourn in public interest
- Open to public
  - timely notice of meetings - 15 days in advance in Federal Register
  - Detailed minutes (who present, what discussed, conclusions, copies of reports)

## § 3(2): “advisory committees”

- ...means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof ..., which is
  - (A) established by statute or reorganization plan, or
  - (B) established or utilized by the President, or
  - (C) established or utilized by one or more agencies
- in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government

## Exclusions

- “Advisory committees” do not include
  - (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and
  - (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.



## Purpose

- “founded on the proposition that the government should conduct the public’ s business in public”
- “[b]y requiring important decisions to be made openly, [the law] will create better understanding of agency decisions

## The Law

- “every portion of every meeting of an agency shall be open to public observation.” 5 U.S.C. § 552b(b)

## In Practice

- Journalists often do not learn about meetings before they happen.
- Often must rely on transcripts released afterward.

## “agency”

- "agency" means any agency, as defined in section 552(f) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency;
- E.g. multi-member independent regulatory agencies: FCC, FTC, SEC...

## “Meeting”

- Quorum of agency members required to take action [quorum being the minimum number of members of a deliberative body necessary to conduct the business of that group]
- “deliberations” ... to “determine or result in the joint conduct or disposition of official agency business[.]”

## Subject matter exceptions

- Same as FOIA
  - Classified information
  - Internal agency personnel rules
  - exempted from disclosure by statute
  - Private commercial or trade secret information
  - Information that would unwarrantedly invade an individual's privacy
  - Information compiled for law enforcement purposes
  - Information related to reports for or by an agency involved in regulating financial institutions



## additional exceptions

- Accusing any person of a crime or formally censuring any person
- For agency regulating \$, information that would lead to financial speculation or endanger the stability of a financial institution
- For other agencies -- would frustrate implementation of proposed agency action
- Information relating to issuance of subpoena, participation in a civil action, or conduct of a formal agency adjudication.

## Notice Requirements

- 7 days notice of meeting subject matter, time, place, whether open/closed
- Published in federal register
- Minutes/transcripts

## Judicial Review

- Act' s provisions are judicially enforceable
- Agency required to justify its actions (like FOIA)
- Plf can get fees/litigation costs
- Courts CANNOT invalidate agency action take in violation of Act