Federal Advisory Committee Act and the Scientific Management Review Board

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April 2009
Review: What is FACA?

- FACA - Federal Advisory Committee Act (Public Law 92-463, as amended).

- Defines a Federal advisory committee and establishes a system to govern Federal advisory committees in the Executive Branch of the Federal Government.

- Created to ensure that the public has access to the deliberations of advisory committee meetings and that there is accurate accounting of committee costs, activities, membership, etc.

- Explains the responsibilities of the President, Congress, Agency Heads, and other Federal officials in relation to the establishment and management of functions of Federal advisory committees.
Compliance

- Any advisory group established or utilized by a Federal agency with one or more non-Government members must comply with FACA.

- Most important provisions for you:
  - Compensation and expense reimbursement;
  - Membership balance;
  - Presence of Federal Officer at all meetings;
  - Open and closed sessions; and
  - Public accessibility to information provided to, and generated by, members
Exemptions

- Exemptions from the Government in the Sunshine Act are common at NIH when information discussed is:
  - Proprietary;
  - Subject to the Privacy Act;

and rarely when information discussed:

- Would frustrate implementation if prematurely disclosed.
Statistics

- NIH has 151 advisory committees
- Approximately 33,000 committee members and peer reviewers served on advisory committees and peer review study groups at NIH in the past year
- NIH held nearly 3,000 meetings in FY 2008
- NIH spent 150 M on committee related business
SMRB’s Scope

- Evaluating NIH research portfolio
- Determining scientific opportunities and public health needs relevant to NIH mission
- Assessing organizational issues
- Meetings, consultations and forums required
- Report on the above to Congress, HHS and NIH at least once every seven years
Outside SMRB’s Scope

- Final NIH actions that follow from board’s reports, recommendations or approvals
- Internal NIH personnel matters
- Final NIH budget actions
- Official NIH communications
Role of Working Groups

- Gathering information, conducting research and analyzing issues in preparation for an advisory committee meeting
- Drafting position papers for deliberation at an advisory committee meeting
# Federal Advisory Committees vs. Working Groups

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<thead>
<tr>
<th>Issue</th>
<th>Federal Advisory Committee</th>
<th>Working Group</th>
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<tbody>
<tr>
<td>Subject to FACA Laws &amp; Regulations</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Provides Direct Advice to the Government</td>
<td>Yes</td>
<td>No</td>
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<td>Federal Official Present at all Meetings</td>
<td>Yes</td>
<td>Yes</td>
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<td>Reports to a Federal Advisory Committee</td>
<td>No</td>
<td>Yes</td>
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<td>Temporary in Nature</td>
<td>No</td>
<td>Yes</td>
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<td>Must Have an Open Public Session</td>
<td>Yes</td>
<td>No</td>
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<td>Must be Advertised in the Federal Register</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Must Contain Members of the Chartered Advisory Committee</td>
<td>Yes</td>
<td>No</td>
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<td>Balanced Expertise, Points of View, Geographic, Ethnic, Gender Representation</td>
<td>Yes</td>
<td>Highly Recommended</td>
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<td>Must Have a Process for Dealing with Conflict of Interest</td>
<td>Yes</td>
<td>Yes</td>
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What’s New

- Current Administration’s emphasis on transparency and open government

- FACA Amendments of 2009 introduced in the House of Representatives
Proposed FACA Amendments of 2009

- Impact on SMRB
  - Conflicts of interest disclosure
  - Subcommittees/working groups
  - Information requirements
  - Public accessibility

- Status in Congress
Frequently Asked Questions

- May committee business be discussed at social gatherings of advisory committee members?

- Can we vote via e-mail?

- May web technology be used when conducting advisory committee meetings?
For More Information

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- Refer to Website:
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  http://www1.od.nih.gov/cmo/