

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	TITLE	
	Federal Advisory Committees	
	Directive Number: FCCINST 1126.4	Effective Date: December 2020

1. **PURPOSE** - The purpose of this Directive is to set forth the Federal Communications Commission's (FCC's or Commission's) policy, administrative guidelines, and management controls relative to federal advisory committees.
2. **CANCELLATION**- This instruction supersedes FCCINST 1126.3, Federal Advisory Committees, dated July 2016.
3. **SCOPE** - This Directive applies to advisory committees established by the Commission under the rules of the FACA. The following types of groups are excluded from FACA and this instruction:
 - a. Groups assembled only to solicit individual advice or exchange facts or information;
 - b. Committees that (i) are exempt from FACA under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b) (UMRA) because they are composed exclusively of Federal officials and elected officers of state, local, or tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities (intergovernmental committees) or (ii) consist wholly of federal government employees (intragovernmental committees);
4. **AUTHORITY** - The Federal Advisory Committee Act (FACA or Act) as amended, 5 U.S.C., App 2; OMB Circular A-135, Management of Federal Advisory Committees; the General Services Administration's Federal Advisory Committee Management Final Rule, 41 CFR Parts 101-6 and 102-3; Executive Order 12024, Transfer of Certain Advisory Committee Functions; and Executive Order 12838, Termination and Limitation of Federal Advisory Committees.
5. **DEFINITIONS:**
 - a. **Advisory committee** – Any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, by the President, or by an agency official for the purpose of obtaining advice or recommendations on issues or policies within the scope of an agency's official responsibilities.

- b. Committee Management Officer (CMO) - The individual designated by the agency head to implement the provisions of the FACA and any delegated responsibilities of the agency head under the FACA.
 - c. Designated Federal Officer (DFO) - An individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of the FACA for that advisory committee under the control and supervision of the CMO.
 - d. Subcommittee – A group, generally not subject to FACA, whose members are appointed by the agency and that reports to the advisory committee and not directly to a federal officer or agency. Its members may be drawn from the parent advisory committee and may include those who are not members of the parent advisory committee as well.
6. POLICY –An advisory committee may be established only if it is essential to the conduct of agency business and if the information to be obtained from the committee’s work is not already available through another advisory committee or source within the federal government and if the advisory committee’s recommendations will provide an important additional perspective affecting agency policy or operations. In accordance with FACA, an advisory committee is chartered for a two-year term. It will automatically terminate at that time unless the FCC Chairman authorizes the committee for another two-year term, or the Chairman terminates the committee prior to expiration of its current charter.
7. RESPONSIBILITIES:
- a. FCC Chairman – The Chairman will:
 - (1) Establish federal advisory committees as necessary to provide information and recommendations on telecommunications policy matters.
 - (2) Designate a CMO to oversee federal advisory committees under FCC sponsorship.
 - (3) Appoint a DFO for each committee established to serve as administrator for the committee.
 - (4) As a committee’s charter expires, determine the need to continue the existing committee and approve its renewal.
 - (5) Appoint members of each federal advisory committee under FCC sponsorship as well as a committee chair.
 - b. Managing Director - The Managing Director will:
 - (1) Establish uniform administrative guidelines and management controls for all advisory committees consistent with FACA and implementing directives.
 - c. Committee Management Officer - The CMO will:
 - (1) Oversee all aspects of the FCC’s Federal Advisory Committee program.

- (2) Approve all actions concerning the establishment, renewal, and termination of FCC advisory committees.
 - (3) Approve and certify the FCC's Annual Comprehensive Review of the agency's advisory committees chartered under FACA.
 - (4) Review and consult with committee DFOs to complete the FCC's Annual Comprehensive Review of the agency's advisory committees chartered under FACA.
 - (5) Recommend revisions, as necessary, to the administrative guidelines and management controls for committees established by the Commission and make the necessary revisions to keep this directive current with guidelines issued by the General Services Administration (GSA). Serve as a resource for the Commission and staff on questions concerning the application and administration of FACA.
- d. Bureau and Office Chiefs- Bureau and Office Chiefs will:
- (1) Recommend to the FCC Chairman the need to establish or renew an advisory committee and furnish to the Chairman information which will provide a basis for approving the recommendation.
 - (2) Recommend to the Chairman an FCC employee to serve as DFO for a committee and, if necessary, recommend an alternate DFO.
 - (3) Provide prompt expert advice to OGC Ethics questions on vetting of members for conflicts of interest and ensure coordination with OGC Ethics in a timely manner to ensure the required internal review and approvals can be achieved efficiently.
 - (4) Ensure the Public Notice seeking nomination to the committee shall include a statement advising committee members that they have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests in activities regulated by the Commission or have interests in matters that may come before the federal advisory committee that may present a conflict of interest or appearance of a conflict of interest and report changes in representation during their tenure on the federal advisory committee.
- e. Designated Federal Officer- The DFO or alternate designated by the applicable bureau will:
- (1) Approve all advisory committee meetings and subcommittee meetings;
 - (2) Approve the agenda for all meetings;
 - (3) Attend all meetings of the committee;
 - (4) Attend all meetings of the subcommittees or appoint the FCC Liaisons to attend subcommittee meetings;
 - (5) Adjourn any meeting whenever adjournment is determined to be in the public interest;
 - (6) Chair a committee meeting when so directed by the FCC Chairman.
 - (7) Maintain for his/her committee a complete set of charters, membership balance plans, membership lists, minutes and reports and recommendations from the committee and its working groups.

- (8) Maintain a committee website that links from the FCC's website. The website will contain, at a minimum, the committee's current charter; list of members; list of subcommittees; reports and recommendations produced by the full committee; and meeting minutes, transcripts, and/or recorded webcasts of committee meetings.
- (9) Submit member nominee information to Office of General Counsel (OGC) Ethics for internal vetting and review. Such submissions to OGC Ethics shall be made as follows:
 - i. Contact OGC Ethics as soon as possible after being designated as the DFO in order to afford ample time for OGC Ethics staff and resources to be identified/assigned and to coordinate the internal review and approval process.
 - ii. Ensure that adequate time (at least three weeks) is provided between the establishment or re-establishment of a committee or subcommittee and the first committee or subcommittee meeting to complete the necessary conflict of interest vetting by OGC Ethics.
 - iii. Provide a draft of the Public Notice (PN) announcing the formation or renewal of an advisory committee to OGC Ethics staff to ensure that the PN provides the requisite information and directs applicants to provide all the information required by OGC Ethics for vetting purposes (*i.e.*, current contact information for the nominees, the nominees' resumes or CV's, nomination letters from officials from the entities that the nominees will be representing with the requisite level of authority to bind these entities, financial disclosure reports for those nominees appointed to the committee in their individual capacities as subject matter experts and SGEs).
 - iv. Include a statement in the Public Notice advising committee members that they have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests in activities regulated by the Commission or have interests in matters that may come before the federal advisory committee that may present a conflict or appearance of a conflict of interest and report changes in representation during their tenure on the federal advisory committee.
 - v. Provide to OGC Ethics a copy of the new charter establishing or renewing the federal advisory committee in a timely manner.
 - vi. Assist OGC Ethics with prompt vetting of members, including coordination with appropriate Bureau personnel who can provide expert advice on any OGC Ethics conflict of interest questions.
- (10) Review (subject to coordination with the Chairman, as appropriate) appointment of members to any working groups.

f. General Counsel- The General Counsel will:

- (1) Provide advice to the Chairman, CMO and DFOs concerning requirements of FACA and GSA's regulations implementing FACA.

- (2) Review proposed members of new and renewed federal advisory committees to ensure no conflicts of interest exist and that members are properly appointed either in a representative capacity or in an individual capacity as subject matter experts and Special Government Employees (SGEs).
- (3) Provide conflicts advice to nominees regarding recusal obligations related to their outside activities or financial interests, including requiring the disclosure of the source of such conflicts to the committee or subcommittee membership for transparency in a timely manner as appropriate, *i.e.*, at the initial or next meeting of the federal advisory committee or subcommittee.

8. PROCEDURES:

a. Establishing a New Committee

- (1) A request to establish a committee shall be submitted to the CMO from the Bureau or Office Chief whose organization has substantive responsibility for the subject matter of the committee. The request will include evidence of Chairman's Office approval to establish the committee, a draft charter for the committee and a Membership Balance Plan as required by GSA. For statutorily-mandated committees, the request will also include relevant dates for the creation, duration or termination of the committee. These documents should be submitted at least 60 days prior to the date the committee would begin operations.
- (2) The committee charter will follow the format and contain the content found in GSA Guidance Document "Preparing Federal Advisory Committee Charters," dated November 2, 2011, as well as the language specified in subsection 7, e (iv), *supra*, concerning the initial and continuing obligation by members to disclose in a timely manner any interests that may present a conflict of interest or appearance of a conflict of interest and report any changes in representation during their tenure on the federal advisory committee.
- (3) The Membership Balance Plan will follow the format and contain the elements found in GSA Guidance Document "Federal Advisory Committee Membership Balance Plan," dated January 2011.
- (4) The CMO will transmit to the GSA Committee Management Secretariat a request to establish a new federal advisory committee, including the proposed charter and Membership Balance Plan. GSA requests 15 calendar days for review, consultation, and concurrence with the request.
- (5) When the GSA Committee Management Secretariat has advised the FCC of its concurrence with the establishment of the committee, the DFO for the committee will publish a Notice of Establishment of Committee in the *Federal Register* at least 15 calendar days before the committee charter is filed as described in subparagraph (6). The Notice advises the public of the establishment of the committee, certifies that

creation of the committee is in the public interest, and sets forth the nature and purpose of the committee. At the discretion of the DFO, a press release may be issued after publication of the notice in the *Federal Register* announcing establishment of the committee. This release may also be used to solicit nominations for committee members.

- (6) At least fifteen days after the notice of establishment is published, the CMO will file copies of the charter with a cover letter from the CMO to the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, and to the Library of Congress. The date of this letter becomes the effective date on which the federal advisory committee may commence operations. No committee shall meet to conduct any business or take action until a charter is filed.

b. Renewal of a Committee

- (1) The CMO will advise the DFO of the upcoming termination date and request a decision concerning whether or not to renew the committee's charter.
- (2) If a committee has not completed its work and there is need to continue its existence, and the committee's DFO has obtained approval from the Chairman's Office to renew the committee, the DFO will request that the CMO seek GSA approval for renewal. This request will be accompanied by a copy of the committee's charter and Membership Balance Plan including any applicable edits since the previous charter and Membership Balance Plan.
- (3) The CMO will transmit to the GSA Committee Management Secretariat a request to renew the committee, including a revised charter and Membership Balance Plan. GSA requests 15 calendar days for review, consultation, and concurrence with the request.
- (4) After the GSA Committee Management Secretariat has advised the FCC of its concurrence with the renewal of the committee, the CMO will file copies of the charter with a cover letter from the CMO to the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, and to the Library of Congress. This becomes the effective date of the new charter and the date upon which the committee is officially renewed. The term of the renewed committee is two years from the filing date of the charter.
- (5) On or shortly after the effective date of renewal, the DFO for the committee will publish in the *Federal Register* a notice which advises of the renewal of the committee. Unlike establishment of new advisory committees, for renewals no prior *Federal Register* notification is required.
- (6) At the discretion of the DFO, a press release may be issued announcing renewal of the committee. This release may also be used to solicit nominations for committee members.

- c. Termination of a Committee – At the discretion of the FCC Chairman, a committee may be terminated at any time during the term of its charter. The CMO will notify the GSA Committee Secretariat and request its concurrence to terminate. Otherwise a committee shall terminate when its charter expires and renewal of the committee is not requested by the FCC.
- d. Selection of Members
- (1) The membership of each parent advisory committee shall be fairly balanced in terms of the points of view represented and the committee's function.
 - (2) There shall be no discrimination in the selection of members on the basis of race, color, national origin, religion or gender.
 - (3) Appropriate safeguards shall be included to assure that the committee's advice and recommendations will not be inappropriately influenced by any special interest, through Bureau and Office coordination with OGC Ethics.
 - (4) Federally registered lobbyists shall not be appointed to serve as members of any advisory committee (or any working group) in an individual capacity, e.g. as Special Governmental Employees, although such individuals may be appointed to serve as members in a representative capacity.
 - (5) Appointment to a committee shall be documented by letter to the selected member and shall specify: committee members have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests in activities regulated by the Commission or have interests in matters that may come before the federal advisory committee that may present a conflict of interest or appearance of a conflict of interest and report any changes in representation during their tenure on the federal advisory committee.
- e. Subcommittees - The requirements of FACA and GSA's regulations concerning federal advisory committees do not apply to subcommittees that report to a parent advisory committee and not directly to the FCC or its staff. However, as with the selection of members of the advisory committee, the membership of each subcommittee shall be fairly balanced in terms of the points of view represented, and all meetings shall be approved in advance and called by the DFO or a designated alternate. The membership of a subcommittee shall be less than a quorum of the membership of the parent advisory committee.
- f. Meetings - The following requirements govern the preparation for and conduct of committee meetings of the parent advisory group:
- (1) No committee will hold any meetings except at the call or with the advance approval of the DFO.
 - (2) Each meeting of a committee shall be conducted in accordance with an agenda approved by the DFO. The agenda shall list the matters to be

considered at the meeting and shall indicate whether any part of the meeting is concerned with matters that are within the exemptions of the Government in the Sunshine Act, 5 USC 552b(c).

- (3) No committee will conduct any meeting in the absence of the DFO or his/her designated alternate.
 - (4) Any federal advisory committee meeting must be announced in the *Federal Register* at least 15 days prior to the date of the meeting. The DFO is responsible for placing this notice in the *Federal Register* in a timely manner. The notice should contain:
 - (a) the name of the committee,
 - (b) the time and place of the meeting,
 - (c) purpose of the meeting and a summary of the agenda,
 - (d) information as to whether the meeting is open to the public or closed (if the meeting or any portion is closed, the agency must state the reasons why, citing the specific exemptions in the Government in the Sunshine Act, 5 USC 552b(c) as the basis for closure and also follow procedures for closure set forth in FACA),
 - (e) the name and telephone number of the DFO or other agency official who may be contacted for additional information concerning the meeting.
 - (5) In exceptional circumstances, the FCC may give less than 15 calendar days notice. A description of the circumstances must be included in the notice, and the Office of General Counsel (OGC) must give approval for publication of such notice.
 - (6) Other means of informing the public of an upcoming meeting, such as press releases and announcements on the committee's website, should be utilized to the extent practicable.
- g. Public Participation - Each advisory committee meeting shall be open to the public except as described in paragraph (h) below and shall be subject to the following:
- (1) The meeting shall be held at a reasonable time and at a place that is accessible to the public;
 - (2) The meeting room shall be of reasonable size, considering the size of the committee, expected public attendance and resources available to the committee and the Commission. Any meeting conducted via webcast meets the requirements of subparagraphs (1) and (2) of this subsection;
 - (3) Any member of the public can file a written statement before or after the meeting;
 - (4) Interested persons may be permitted by the committee or its chairman to present oral statements to the extent that time available for the meeting permits and must be in accordance with existing committee procedures;

- (5) Participation other than by presentation of oral or written statements by members of the public in committee meetings or questioning of committee members shall not be permitted except in accordance with established committee procedures.
- h. Closed Meetings - Entire committee meetings or portions thereof may be closed to the public if the expressed purpose of the meeting will be to discuss subject matter which is within the exemptions contained in the Government in the Sunshine Act (5 USC 552b).
- (1) Closure of a meeting or portions of a meeting requires that the General Counsel and Chairman have determined that such closure is permissible under subsection (c) of section 552b of title 5, USC. This determination should be made in writing with an explanation of the reasons for closure. Notices of the meeting shall state whether any part of the meeting will be closed and state the reasons why. Meetings may be closed if they are likely to:
 - (a) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;
 - (b) disclose matters specifically exempted from disclosure by statute (other than 5 USC 552), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;
 - (c) disclose trade secrets and commercial or financial information obtained from a person that is considered privileged or confidential;
 - (d) involve accusing any person of a crime, or formally censoring any person;
 - (e) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - (f) disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would interfere with enforcement proceedings; deprive a person of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of personal privacy; disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source; disclose investigative techniques and procedures; or endanger the life or physical safety of law enforcement personnel;

- (g) disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, except in any instance where the agency has already disclosed to the public the content or nature of the proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final action on such proposal.
 - (2) A committee member or DFO seeking to close a meeting (or portion thereof) must notify the CMO in writing at least 30 days before the date of meeting of its reasons for desiring to close the meeting. The CMO will immediately refer the matter to the Office of General Counsel and to the Chairman's office for review and a determination of whether closure is appropriate.
 - (3) When a meeting (or portion) is closed, members of the committee shall not disclose the matters discussed, except with other members of the committee, the staff of the committee, or FCC employees.
 - i. Minutes - Detailed minutes (and/or transcripts or recorded webcasts) shall be kept of each committee meeting. If transcripts or recorded webcasts will be used as substitutes for minutes, their use shall be directed and approved by the DFO prior to the meeting. The committee chairperson may designate a member or a person who is not a member to take the minutes. The committee chairperson, or if unable to attend, his delegate, shall certify to the accuracy of the minutes. At a minimum, the minutes shall contain:
 - (1) the time, date, and place of the meeting;
 - (2) a list of committee members and FCC employees present, along with the names of members of the public who presented oral or written statements;
 - (3) a complete summary of matters discussed and conclusions reached;
 - (4) copies of all reports issued or recommendations approved by the committee.
 - j. Records
 - (1) Subject to paragraph (2), each committee shall make its charter, membership lists, reports, recommendations, and other key documents available on the committee's website for public inspection and copying, except access may be restricted on the basis of the exemptions contained in the Freedom of Information Act (FOIA), as amended, if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA. When the only basis for denying access to a document is exemption (5), the CMO must make a positive determination that such a denial is essential to protect the free expression of internal views and to avoid interference with agency or advisory committee operations. This determination shall be reviewed and approved by the OGC.

- (2) Records that relate directly to any portion of a meeting that was closed shall not be made public, except with the prior approval of OGC. A copy of the determination to close the meeting shall be made available to the public on request.
- (3) Committee records shall be available for public inspection until the committee ceases to exist. Requests for access to records not available on the committee's website should be directed to that committee's DFO.
- (4) Any person whose request for access to committee records has been denied can request administrative review in accordance with 0.461(i) of the Commission's Rules.
- (5) Substantive committee records are considered permanent Federal records and will be preserved and accessioned in accordance with General Records Schedule 6.2: Federal Advisory Committee Records.
- (6) DFOs shall take mandatory federal advisory committee records training annually.
- (7) Each DFO shall ensure that committee members copy the DFO and committee mailbox on all correspondence.

k. Administrative Requirements

- (1) Each Bureau or Office responsible for a committee shall provide the necessary support services to the committee. It may include in its budget submission a separate item for operation of committees.
- (2) The DFO is responsible for maintaining financial records of expenditures made to facilitate the legitimate activities of their committee.

l. Annual Comprehensive Review

- (1) The FCC will report to GSA on an annual basis, providing information on each federal advisory committee covered by FACA which is in existence during any part of a fiscal year.
- (2) DFOs will provide required information concerning their committee, within the time frame requested by the CMO, using a government-wide system that GSA maintains.
- (3) The CMO will review the information for each committee and the CMO will certify to GSA that it is correct. This certification must be completed shortly after completion of a fiscal year by a deadline established by GSA.

9. EFFECTIVE DATE AND IMPLEMENTATION- This directive is effective immediately and shall be implemented promptly upon distribution.

A handwritten signature in blue ink, appearing to read "Mark Stephens", with a large, sweeping flourish at the end.

Mark Stephens
Managing Director