

FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554 FCC DIRECTIVE	TITLE	
	Federal Advisory Committees	
	Directive Number: FCCINST 1126.5	Effective Date: March 2023

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 1126.4, Federal Advisory Committees (FACs), dated December 2020.
3. **SCOPE** - This Directive applies to advisory committees established by the Commission under the rules of the Federal Advisory Committee Act (FACA or the Act). 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, 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. Agency Head - - The Chairwoman or Chairman of the Commission, as the case may be.
 - c. Committee Management Officer (CMO) - The individual responsible for implementing section 8(b) of the FACA and any other responsibilities delegated by the agency head. See 41 CFR § 102-3.115.
 - d. Designated Federal Officer (DFO) - An individual designated by the agency head, for each advisory committee for which the agency head is responsible, to approve or call the meetings of the advisory committee or its subcommittees, to approve meeting agendas, to attend meetings, and to conduct such other responsibilities as may be set forth in FACA or implementing GSA regulations, or in section 7(e) of this directive.
 - e. 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 also include those who are not members of the parent advisory committee.
6. POLICY –An advisory committee may be established only if it facilitates agency business by providing an important additional perspective affecting agency policy or operations and will provide information not already available through another advisory committee or source within the federal government.
- a. Term - In accordance with FACA, an advisory committee is chartered for a two-year term. It will automatically terminate at that time unless the agency head authorizes the committee for another two-year term or terminates the committee prior to expiration of its current charter.
7. RESPONSIBILITIES:
- a. FCC Agency Head – The agency head will:
 - (1) Establish federal advisory committees as necessary to provide information and recommendations on communications 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, specifying whether the member will be serving as a representative for a specific company, entity or organization, or as an independent subject matter expert and special government employee (SGE). The appointment letter shall also

specify that 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.

- b. Managing Director - The Managing Director will:
 - (1) Establish uniform administrative guidelines and management controls for all advisory committees consistent with FACA and implementing regulations and directives.

- c. Committee Management Officer - The CMO will:
 - (1) Oversee all aspects of the FCC's Federal Advisory Committee program.
 - (2) Review and consult with committee DFOs to complete the FCC's submission to the General Services Administration's (GSA) Annual Comprehensive Review of the advisory committees chartered under FACA, as required by section 7(b) of the FACA.
 - (3) Approve and certify the FCC's submission to the GSA's Annual Comprehensive Review of the advisory committees chartered under FACA.
 - (4) 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 GSA.
 - (5) Serve as a resource for the Commission and staff on questions concerning the application and administration of FACA.
 - (6) Coordinate annual training, including records training provided by the Agency Records Officer, as well as training on the administration of federal advisory committees, for all DFO's and their designated deputies or alternates and provide them with a current copy of this Directive to review.

- d. Bureau and Office Chiefs- Bureau and Office Chiefs will:
 - (1) Recommend to the agency head the need to establish or renew an advisory committee and furnish information which will provide a basis for approving the recommendation.
 - (2) Recommend to the agency head 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 about relevant questions that will assist in the vetting of potential advisory committee members for conflicts of interest and coordinate with OGC Ethics in a timely manner to ensure the required internal review and approvals can be achieved efficiently.

- (4) Ensure that the Public Notice (PN) seeking nominations to each committee includes the content required by section 8(c) of this directive.
- e. Designated Federal Officer- The DFO of each advisory committee will:
- (1) Approve all advisory committee meetings and subcommittee meetings.
 - (2) Approve the agenda for all meetings.
 - (3) Attend meetings of the committee.
 - (4) Attend meetings of the subcommittees directly or through an appointed FCC Liaison who reports to the DFO.
 - (5) Adjourn any meeting whenever adjournment is determined to be in the public interest.
 - (6) Chair a committee meeting when so directed by the agency head.
 - (7) Maintain for the advisory committee a complete set of charters, membership balance plans, membership lists, minutes and reports and recommendations from the committee and its subcommittees.
 - (8) Ensure that committee members receive FACA records training from the Agency Records Officer or his/her representative at the first committee meeting of each new or renewed charter.
 - (9) 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; meeting minutes; and any transcripts and/or recorded webcasts of committee meetings.
 - (10) Coordinate with OGC Ethics to ensure a timely review and approval process for committee and subcommittee members. This shall include contacting OGC Ethics promptly after learning that an advisory committee will be established or renewed; verifying that nominee applications include all required information prior to submitting the applications to OGC Ethics for review at least three weeks before the first anticipated meeting of the advisory committee or subcommittee; and providing OGC Ethics staff with any information they may require during the vetting process, including identifying relevant expert Bureau personnel and providing a copy of the committee charter.
 - (11) Review (subject to coordination with the Chair of the advisory committee, as appropriate) appointment of members to subcommittees.
 - (12) Attend mandatory annual training and review a current copy of this Directive.
 - (13) Complete the FCC's submission to GSA's Annual Comprehensive Review in a timely manner.
- f. Office of General Counsel (OGC) - OGC will:
- (1) Provide advice to the agency head, CMO and DFOs concerning requirements of FACA and GSA's regulations implementing FACA.
 - (2) Review through OGC Ethics proposed members of new and renewed federal advisory committees and subcommittees to ensure no conflicts of

interest or significant appearances of 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 SGEs.

- (3) Provide through OGC Ethics 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 the agency head's 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 120 days prior to the date the committee would begin operations.
- (2) The committee charter will follow the format and contain the content found in the GSA Guidance Document entitled "Preparing Federal Advisory Committee Charters," dated November 2, 2011. Each charter shall also include language reiterating the initial and continuing obligation of all advisory committee members and subcommittee members to disclose in a timely manner any interests that may present a conflict of interest or appearance of a conflict of interest and to report any changes in representation during their tenure on the advisory committee or subcommittee.
- (3) The Membership Balance Plan will follow the format and contain the elements found in the GSA Guidance Document entitled "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) After the GSA Committee Management Secretariat has advised the FCC of its concurrence with the establishment of the committee, and at least 15 calendar days before the committee charter is filed as described in paragraph (6), the

DFO for the committee will publish a Notice of Establishment of Committee in the *Federal Register*. The Notice advises the public of the establishment of the committee, certifies explains that creation of the committee is in the public interest, and describes 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, through the FCC's Office of Legislative Affairs, will file copies of the charter with a cover letter from the CMO with the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, and with 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 recommendation from the Bureau or Office, with documentation of the agency head's approval, concerning whether or not to renew the committee's charter.
- (2) If the Bureau or Office Chief has recommended that an advisory committee should be renewed, and the agency head has approved that recommendation, the DFO will request that the CMO seek GSA consultation for the renewal. This request will be accompanied by a copy of the committee's charter and Membership Balance Plan, including any recommended edits to 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, through the FCC's Office of Legislative Affairs, will file copies of the charter with a cover letter from the CMO with the Chair and Ranking Member of the FCC's Authorization and Appropriations Committees and Subcommittees, and with the Library of Congress. The date of this letter 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, unless a shorter term is specified.
- (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. Public Notice Soliciting Membership Nominations.

- (1) DFOs shall issue a PN seeking nominations for committee members either (i) after the GSA Committee Management Secretariat has advised the FCC of its concurrence with the establishment or renewal of the committee or (ii) before such concurrence (with a statement explaining that the request is subject to consultation with GSA.).
- (2) DFOs should contact OGC or the CMO for a copy of the most recent version of a standard Public Notice Membership Solicitation to ensure that all current application requirements are provided for in the PN. Before such PNs are issued, the DFO shall obtain the review and concurrence of OGC and the CMO to its content. Importantly, all such PNs shall instruct organizational applicants to provide with their applications all the information required by OGC Ethics for vetting purposes (e.g. current contact information, resumes, and nominating letters) and shall advise applicants of their initial and continuing obligations to disclose potential conflicts of interests as well as contractual work involving issues that are likely to come before the FAC.

- d. Termination of a Committee – At the discretion of the agency head,, 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.

e. 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 as subject matter experts and SGEs, although such individuals may be appointed to serve as members in a representative capacity.

- (5) Appointment to a committee (or any subcommittee) shall be documented by letter to the selected member and shall specify whether the appointee is serving in a representational capacity for a company, organization or entity or as an independent subject matter expert and SGE and shall specify that 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 committee.
- f. Subcommittees - The requirements of FACA and GSA's regulations concerning federal advisory committees generally 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. The DFO shall be responsible for approving in advance all subcommittee meetings. The membership of a subcommittee shall be less than a quorum of the membership of the parent advisory committee.
- g. 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 from the open meeting requirements of the Government in the Sunshine Act, 5 USC 552b(c).
 - (3) No committee will conduct any meeting in the absence of an authorized agency official, ordinarily the DFO except in extraordinary circumstances.
 - (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.
- h. Public Participation - Each advisory committee meeting shall be open to the public except as described in paragraph (i) 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 chair to present oral statements, in accordance with existing committee procedures, to the extent that time available for the meeting permits.
 - (5) Participation by members of the public other than by written statements or by presentation of oral statements in committee meetings, including questioning of committee members, shall not be permitted except in accordance with established committee procedures.
- i. Closed Meetings – An entire committee meeting or portion thereof may be closed to the public if the expressed purpose of the meeting will be to discuss subject matter which is within an exemption 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 agency head 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 agency head 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 to other members of the committee, the staff of the committee, or FCC employees.
- j. Minutes Detailed minutes shall be kept of each committee meeting. Minutes shall be supplied upon request to any member of the public who requests them, and GSA recommends that minutes be posted to the respective committee webpage on fcc.gov. If transcripts or recorded webcasts will be used as a supplement to minutes, their use shall be directed and approved by the DFO prior to the meeting. The committee chairperson may designate a member to take the minutes or they may be taken by FCC staff. The committee chairperson, or if unable to attend, the chair's 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 those present, along with the names of any members of the public who presented oral or written statements.
 - (3) a description of matters discussed and conclusions reached, including copies of any PowerPoints or similar materials made available at the meeting (with a notation that additional details may be available in any transcript or recorded webcast/videotape of the meeting).
 - (4) copies of all reports received, issued or approved by the advisory committee, as well as a description of any recommendations approved by the committee if not contained in such reports.
- k. 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 section 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 substantive correspondence.
- (8) DFOs and their designated deputies or alternates shall take mandatory trainings (covering records requirements, membership selection, and the administration of federal advisory committees) and receive a current copy of this Directive to review. Subcommittee liaisons will be encouraged to attend such training sessions.
- (9) The Agency Records Officer or his/her representative shall present a FACA records training for committee members at the first committee meeting of each new or renewed charter.

l. 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.

m. 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 governmentwide 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.

n. Promote Diversity, Equity, Inclusion and Accessibility

- (1) To the maximum extent practical, the FCC will obtain advice and recommendations from its advisory committees, consistent with the scope of their assignments and charter, about appropriate and effective means to eliminate historical, systemic, and structural barriers that have contributed to the perpetuation of disadvantaged or underserved individuals and communities.
- (2) The FCC's advisory committees will recommend to the Commission, consistent with the scope of their assignments and charter, ways to ensure equitable and inclusive access to communications and to Commission programs, and will further recommend ways that underserved individuals and communities can leverage and benefit from the wide range of opportunities made possible by digital technologies, media, communication services, and next-generation networks.

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

Mark Stephens
Managing Director