



# Department of Defense DIRECTIVE

NUMBER 5105.4

February 10, 2003

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DA&M

SUBJECT: Department of Defense Federal Advisory Committee Management Program

- References:
- (a) Appendix 2 of title 5, United States Code Annotated
  - (b) DoD Directive 5105.4, "Department of Defense Federal Advisory Committee Management Program," September 5, 1989 (hereby canceled)
  - (c) Title 41, Code of Federal Regulations, Subpart 102-3, "Federal Advisory Committee Management," current edition
  - (d) [DoD Directive 5105.18](#), "DoD Committee Management Program," February 8, 1999
  - (e) through (j), see enclosure 1

## 1. PURPOSE

Pursuant to reference (a), this Directive reissues reference (b) to update policies and responsibilities for the administration of the Federal Advisory Committee Act (FACA) within the Department of Defense.

## 2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as "the DoD Components").

### 3. DEFINITIONS

3.1. Federal Advisory Committee. A committee, board, commission, council, conference, panel, task force, or other similar group that is not composed wholly of full-time or permanent part-time employees of the Federal Government and:

3.1.1. Is established by statute, or established by the President or an Agency official, and is utilized by the President or an Agency official for obtaining advice or recommendations on issues or policies that are within the scope of their official responsibilities; or

3.1.2. Is not established either by statute or by the President or an Agency official, but is under the actual management control of the President or an Agency official or employee and is utilized by them for obtaining advice or recommendations on issues or policies that are within the scope of their official responsibilities.

3.2. Special Government Employee. An individual who is retained by the Federal Government to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days.

### 4. POLICY

4.1. DoD Federal Advisory Committees shall be established and administered consistent with the FACA (reference (a)), Subpart 102-3 of title 41, Code of Federal Regulations (reference (c)), and this Directive. Their number shall be kept to the absolute minimum required. They shall be established only when they are determined to be essential and terminated when they are no longer carrying out the purpose for which they were intended.

4.2. The following are excluded from coverage under reference (c) and the provisions of this Directive:

4.2.1. Advisory committees specifically exempted from the Act by law.

4.2.2. Advisory committees created by a non-Federal entity (such as a contractor or private organization), if such committees are not actually managed or controlled by an officer or employee of the Executive Branch.

4.2.3. Meetings initiated by one or more Federal officials with more than one individual for obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.

4.2.4. Groups assembled to meet with one or more Federal officials for the purpose of exchanging facts or information.

4.2.5. Meetings of two or more DoD Federal Advisory Committee or subcommittee members convened solely to gather information or conduct research for a DoD Federal Advisory Committee, to analyze relevant issues and facts, or to draft proposed position papers for deliberation by the DoD Federal Advisory Committee.

4.2.6. Inter-Governmental and Intra-Governmental committees composed wholly of full-time or permanent part-time officers or employees of the Federal Government.

4.2.7. Local civic groups whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committees, councils, boards, commissions, or similar groups established to advise or make recommendations to State or local officials.

4.2.8. Committees established to perform primarily operational, as opposed to advisory functions.

4.2.9. Meetings initiated by the President or one or more Federal officials for obtaining advice or recommendations from a single individual.

4.3. The DoD Committees that are not DoD Federal Advisory Committees shall be established and administered consistent with the provisions of DoD Directive 5105.18 (reference (d)).

4.4. The DoD Federal Advisory Committees shall not be established to make decisions, conduct Agency operations, or perform functions that are capable of being carried out by existing Agency staffs.

4.5. Membership of each DoD Federal Advisory Committee shall be balanced in terms of the points of view represented and functions to be performed. The DoD Federal Advisory Committees requiring technical expertise shall include members with demonstrated professional or personal qualifications relevant to the committee's work. The DoD officials sponsoring a DoD Federal Advisory Committee shall develop criteria for membership consistent with these requirements and document the reasons for membership selections.

4.6. Except when otherwise specified by the President or the Congress, the Secretary of Defense, the Deputy Secretary, or their designee shall approve the

appointment of members to DoD Federal Advisory Committees. Appointees may not serve longer than 4 years, unless an extension is approved by one of these officials.

4.7. Members of DoD Federal Advisory Committees who are not full-time or permanent part-time employees of the Federal Government shall be appointed as Special Government Employees. Such appointments shall be made annually and consistent with authoritative guidance, such as administrative instructions or manuals, published by the cognizant DoD Component.

4.8. Members of DoD Federal Advisory Committee who are appointed as Special Government Employees shall be encouraged to serve without compensation. A member may not be compensated unless the Head of the DoD Component to which the committee reports, or his or her designee, certifies that appointment of the member is essential to obtain the necessary balance or expertise and that, without compensation, the member would not be available to serve.

4.9. Members of DoD Federal Advisory Committee serving as Special Government Employees, who are being compensated at a basic rate of pay fixed at or above 120 percent of the minimum rate of basic pay for a GS-15 (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h) (reference (e))), and expected to serve more than 60 calendar days during a calendar year, shall file a Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report." All other members serving as Special Government Employees (including those serving without compensation) must file an Office of Government Ethics (OGE) Form 450, "Confidential Financial Disclosure Report," prior to appointment as a Special Government Employee, and annually thereafter, prior to reappointment. Policies and procedures for filing financial disclosure reports are contained in DoD Directive 5500.7 and DoD 5500.7-R (references (f) and (g)).

4.10. Special Government Employees compensated at a rate of ES-5 or above are subject to a 1-year ban on post-employment representation in accordance with 18 U.S.C. 207(c) (reference (h)).

4.11. For each DoD Federal Advisory Committee, there shall be a Federal officer or employee appointed in writing as the Designated Federal Official, who shall have the authority to approve or call each meeting, approve the meeting agenda, attend each meeting, and adjourn meetings when he or she determines such action to be in the public interest.

4.12. Notification of each DoD Federal Advisory Committee meeting shall be published in the Federal Register at least 15-calendar days in advance of the date of the meeting.

4.13. Meetings of DoD Federal Advisory Committees shall be open to the public unless the Head of the sponsoring DoD Component, or his or her designee, in coordination with that Component's General Counsel, makes a written determination to close all or part of a meeting. In such instances:

4.13.1. The determination shall cite those provisions of 5 U.S.C. 552b(c)(1)(1988) (reference (i)) that justify closure.

4.13.2. A summary of meeting activities shall be prepared and maintained as part of the Committees files.

4.14. Reports, records, and minutes of DoD Federal Advisory Committee meetings and other activities shall be prepared within 90 days after a meeting and maintained and/or submitted consistent with references (a) and reference (c).

## 5. RESPONSIBILITIES

5.1. The Director of Administration and Management (DA&M), Office of the Secretary of Defense, shall:

5.1.1. Provide guidance on policies and procedures for the establishment and administration of DoD Federal Advisory Committees.

5.1.2. Ensure that DoD Federal Advisory Committees are established and administered consistent with references (a) and (c), and this Directive.

5.1.3. Designate a DoD Committee Management Officer who shall carry out the policies contained in references (a) and (c), and this Directive.

5.1.4. Represent the Department of Defense and maintain liaison with the General Services Administration and other Government Agencies on matters involving DoD Federal Advisory Committees.

5.1.5. Review periodically the operations and records of DoD Federal Advisory Committees for compliance with applicable laws, policies, and regulations; provide results of these reviews to the Committee's Designated Federal Official and

other appropriate officials; and ensure that actions are taken to correct deficiencies, when required.

5.1.6. Review annually the need to continue each existing DoD Federal Advisory Committee, consistent with Section 14 of the FACA (reference (a)), the public interest, and the intended purpose of the committee, and ensure that committees no longer needed are terminated in a timely manner.

5.1.7. Obtain electronic or hard copy reports and information on DoD Federal Advisory Committees, as required by and consistent with references (a), (c), this Directive, and DoD Directive 8910.1 (reference (j)).

5.1.8. Carry out, for OSD, the functions and responsibilities assigned to the Heads of DoD Components by this Directive.

5.2. The Heads of DoD Components or their Designees shall:

5.2.1. Ensure that DoD Federal Advisory Committees under their cognizance are established and administered consistent with references (a) and (c), and this Directive.

5.2.2. Submit to the DA&M requests for establishment or revision and notifications of termination of DoD Federal Advisory Committees under their cognizance.

5.2.3. Designate a Committee Management Officer to carry out assigned advisory committee responsibilities for their respective DoD Component.

5.2.4. Maintain information about the membership and activities of DoD Federal Advisory Committees under their cognizance, consistent with references (a) and (c), and this Directive.

5.2.5. Submit the electronic or hard copy reports required by references (a), (c), and (d) to the appropriate offices.

5.2.6. Approve compensation for non-Federal Government DoD Federal Advisory Committee members, except that the DA&M shall serve as the approving authority for committees sponsored by OSD officials.

5.2.7. In coordination with the cognizant General Counsel, make a determination, in writing, whenever all or part of a DoD Federal Advisory Committee meeting is to be closed to the public.

5.3. The OSD Officials who sponsor DoD Federal Advisory Committees shall carry out, for the committees under their cognizance, the responsibilities in subparagraphs 5.2.1. through 5.2.5., above.

6. EFFECTIVE DATE

This Directive is effective immediately.



Paul Wolfowitz  
Deputy Secretary of Defense

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Section 5304(h) of title 5, United States Code
- (f) [DoD Directive 5500.7](#), "Standards of Conduct," August 30, 1993
- (g) DoD 5500.7-R, "Joint Ethics Regulation," August 1993, as amended
- (h) Section 207(c) of title 18, United States Code
- (i) Section 552b(c)(1)(1988) of title 5, United States Code, "Government in the Sunshine Act"
- (j) [DoD Directive 8910.1](#), "Management and Control of Information Requirements," June 11, 1993