



PASSENGER RAIL ADVISORY COMMITTEE

PRESENTATION ON THE FEDERAL ADVISORY COMMITTEE ACT AND GOVERNMENT ETHICS

**Office of the General Counsel
Surface Transportation Board**

October 16, 2024

FACA Background

Advisory committees have a long and storied history

- George Washington/Whiskey Rebellion (1794)
- Warren Commission/JFK
- Three Mile Island Commission, 9/11 Commission, BRAC Commission

In 1972, Congress formalized federal advisory committees in the Federal Advisory Committee Act, or FACA.

Today, over 1,000 Federal advisory committees advise the Executive Branch, with over 60,000 committee members

The Board has used advisory committees since 1994. It has three other advisory committees: NGCC, RETAC, and RSTAC

What are the Basic Requirements for a FACA Committee?

- Develop and file a charter with Congress*
- Maintain a balanced membership
- Hold open public meetings
- Keep detailed minutes or summaries of meetings
- Allow public filing of written statements
- Announce all meetings in Federal Register
 - 15 days in advance
- Maintain all committee documents

* Please read the PRAC Charter

What are the Main Functions of a FACA Committee?

Under FACA, advisory committees must:

- Provide important, balanced and relevant advice
- Act promptly to complete work
- Comply with reasonable cost controls and recordkeeping requirements*
- Hold meetings open to the public

* Comply with relevant appropriation laws

<https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/advice-and-guidance/the-federal-advisory-committee-act-brochure>

Why do FACA Committees Require Public Meetings?

Public Meetings are intended to:

- Prevent inappropriate influence on government decisions
- Eliminate government decisions made behind closed doors
- Improve public confidence in Agency decision-making
- Allow public contemporaneous access to the agency decision process (through the committee)

FACA Public Meetings – cont'd

What does it mean to have Public Access?

Access versus Participation:

- While FACA requires public access to meetings, it does not provide for public participation at FACA meetings. This means that:
 - The Public may observe the committee meetings*
 - The Public has no right to join the discussion
 - The Public may submit written comment

* There are some narrow exceptions.

Who is the Designated Federal Officer (DFO)?

Each FACA advisory committee has a DFO, who:

- Ensures compliance with FACA, and any other applicable laws and regulations
- Calls, attends, and adjourns committee meetings
- Approves agendas
- Maintains required records on costs and membership
- Maintain records for availability to the public

* Each Agency also has a Committee Management Officer, who oversees FACA administration across all agency FACA committees

Who is your DFO for PRAC?

Brian O'Boyle

DFO/Attorney Adviser

Passenger Rail Advisory Committee

Office of Proceedings

Surface Transportation Board

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STB Committee Management Officer: Chris Oehrle



ETHICS for FACA Committee Members

Be Aware of Your Limits

Do Gov't Ethics Laws Apply to FACA Committee Members?

Yes, but the extent depends on your status as a FACA Committee Member.

There are generally three categories of FACA Committee Members:

- (1) Federal Employees
- (2) Special Government Employees
- (3) Representatives

What category you fall in will determine the level of government ethics that applies to you

What is your status as a PRAC Committee Member?

All non-Board employees on PRAC are:

“REPRESENTATIVES.”

Individuals who serve on advisory committees as representatives are appointed to a committee to provide it with the points of view of nongovernmental entities or of a recognizable group of persons (e.g., an industry sector, labor unions, or environmental groups, etc.). It is expected that representatives will represent a particular point of view or interest.

Thus, “Representatives” are Not Subject to Government Criminal Conflict of Interest Statutes.

But federal employees are subject to all government ethics rules, including conflict of interest statutes.

Ethics (Status) – cont'd

What ethical standards do and do not apply to Representatives?

- Representatives are not subject to conflict of interest rules and are not required to file financial disclosure reports
- HOWEVER, that does not mean that Representatives are “off the hook”
- Representatives are subject to a more narrow but important standard:

YOUR STANDARD:

Representative members of FACA Committees should comport themselves with integrity so as **not to trade upon their position for their personal benefit.**

Two guidelines to maintain the integrity of your committee are:

- Ask if a particular action is appropriate, rather than just whether it is legal
- Question if a particular action might embarrass your committee, its members, or the Board.

Ethics (Status) – cont'd

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Ethics – *Ex Parte* Communications

What is an improper *ex parte* contact?

Under 49 C.F.R. §§ 1102.2(a)(5) and (c), an improper “*ex parte* communication” means (1) an oral or written communication that concerns the merits or substantive outcome of a pending proceeding; (2) is made without notice to, or participation of, all parties; and (3) is intended to influence anyone who participates or could reasonably be expected to participate in the decision. This prohibition is defined broadly.

In a nutshell, you should not discuss substantive issues concerning the merits of pending proceedings with Board members or employees during PRAC meetings. This means that you may not discuss pending matters during PRAC meetings.

- * If you have a question about whether a topic is inappropriate, you may ask Brian, and we can provide you with advice.



ETHICS PUBLIC SERVICE

Public service is a public trust. Every citizen deserves to have complete confidence in the integrity of the Federal Government. As public servants, we should adhere to the principles of ethical conduct.

Questions?

FACA or Ethics:

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