

## **MANAGING MEETINGS OF STAKEHOLDERS** **TO OBTAIN INDIVIDUAL INPUT**

### **Background**

Whenever you work with a group that includes *one or more* individuals who are not permanent federal government employees you should be aware that the Federal Advisory Committee Act (FACA) potentially may apply to the group. FACA generally applies to groups that EPA establishes or utilizes in the interest of obtaining group advice and recommendations for the Agency. FACA requires that EPA follow certain procedural requirements in organizing such groups and conducting meetings, including drafting a charter and filing it with Congress, providing public notice of meetings, holding open meetings, providing documents to the public on request, and ensuring that the membership of such a group is fairly balanced in the points of view represented. Consult the Office of General Counsel for more detailed information on the applicability of FACA to a particular group.

Although EPA takes its FACA responsibilities seriously and follows FACA's requirements for obtaining collective advice from groups it establishes or utilizes, it is appropriate for EPA to get input from outside individuals and entities using other mechanisms that are not subject to FACA. One such mechanism is arranging a meeting to obtain individual advice rather than group or collective advice. Such a meeting typically occurs only once and brings together several participants to obtain advice and input from each individual. This allows EPA to provide background materials and explain the issues to several individuals at the same time and to receive input from each individual. When you hold such a meeting, it may raise issues or questions as to whether FACA applies. For example, if you were to conduct the meeting in such a way as to facilitate or encourage the individuals to provide collective rather than individual advice, the meeting could be subject to FACA. This memorandum provides information and suggestions on actions you could take in planning, conducting and following-up on these meetings to eliminate or minimize the risk that such meetings would be subject to FACA. You should consider the following recommendations, examples, and practice tips as you plan and conduct your meetings.

### **Before the Meeting:**

When planning your meeting, you should consider:

- Drafting the invitation so that it clearly indicates that the purpose of the meeting is to obtain individual input/advice.
- Consulting with the facilitator or person leading the meeting to discuss the potential FACA issue for this type of meeting, the reason for focusing the meeting on individual input and the potential consequences if the attendees provide collective advice.

- Obtaining the input through individual e-mails or telephone calls rather than an in-person meeting. (Be aware that e-mail discussions among a group could constitute a meeting under FACA.)
- Having only one meeting involving the same individuals. (When people attend several meetings with the same attendees, they may view themselves as a group and develop collective advice.) Remember that a company can be an individual for FACA purposes. If a company sends a representative to more than one meeting, this is considered to be the same individual attending even if the company sends different individuals to the meetings. Similarly, if a company sends two people to the same meeting, they are still providing individual input from one company.

Using the following alternatives to prevent the participants from coalescing into a group if you want to have more than one meeting:

- Inviting different individuals/organizations to each meeting (for example, invite Gateway to one meeting and Dell to the next),
- Holding a separate meeting for each sector (for example, one meeting for input from computer manufacturers and a separate meeting for environmental public interest groups).
- Taking steps to prevent participants who are invited to more than one meeting from acting like a group. If you allow the individuals to coalesce into a group and provide collective advice, the group could become subject to FACA.
- Referring to meeting participants or attendees rather than a committee, task force, or group.
- Consulting with your OGC attorney, as appropriate. You particularly may want to discuss your plans with the OGC FACA expert.

### **During the Meeting:**

During the meeting, you should consider:

- Keeping the focus on individual input by having the participants direct their comments to EPA or the meeting facilitator, not to each other.
- Discouraging extended interaction between the individual participants. While some discussion may be beneficial, it should be minimal.
- Focusing the participants away from discussions that could lead to collective agreement on a common position.
- Stopping the discussion if the individuals begin have a discussion that could lead to group advice and reminding them that you are interested in their individual input, not collective advice.

It is good practice to say things like:

- We want you to provide us with individual input on \_\_\_\_.
- The purpose of this meeting is to have each participant provide us with your individual input/advice/recommendations on \_\_\_\_\_. We do not want you to provide group or collective input/advice/recommendations.
- While we welcome discussion, we ask that you direct your comments to EPA, not to each other.
- It sounds like we have heard all of the viewpoints on this topic, so let's move on to \_\_\_\_.
- To summarize your comments, we heard the following views \_\_\_\_\_. Did we miss any? (Don't indicate that any one view was agreed to by all or most of the participants, just state what the different views are.)

It is better if you don't say things like:

- Who agrees with that?
- Does everyone agree with that?
- It sounds like (most) everyone agrees that \_\_\_\_\_, is that right?
- Does anyone disagree with that?
- What do you all think of that?

### **After the Meeting:**

When conducting follow-up activities after the meeting, you should consider:

- Referring to the meeting and the participants rather than describing the meeting as a committee, task force, or group when describing the meeting in documents.
- Representing the advice as individual input from individual participants when discussing the input obtained from the meeting. You should not represent it as collective advice or as the view of the group. Instead, note that EPA obtained and considered individual input or that EPA provided opportunities for stakeholders to provide individual comments. EPA can conclude that most stakeholders appeared to support a particular position, but it should be stated clearly that this is EPA's conclusion.

If you have specific questions about FACA, contact Marilyn Kuray in the Office of General Counsel (202/564-3449).