

# *Federal Advisory Committee Act (FACA) Overview*



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# Help America Vote Act of 2002(HAVA) 52 U.S.C. 20901 et seq.

- HAVA established three permanent advisory boards to assist the EAC in carrying out its mandates under the law. (Sec. 211)
  - The Standards Board
  - The Advisory Board
  - The Technical Development Guidelines Committee
- Each of these Boards are subject to the Federal Advisory Committee Act.



# Duties of Advisory Committees

- Standards Board and Board of Advisors
  - The Standards Board and the Board of Advisors are required to review the voluntary voting system guidelines, the voluntary guidance under Title III, and the best practices recommendations contained in a report submitted under section 242(b). (Absentee uniformed services voters under UOCAVA) (SEC. 212 )
- Technical Guidelines Development Committee
  - The TGDC assists the Executive Director of the Commission in the development of the voluntary voting system guidelines. (SEC. 221)



# Federal Advisory Committee Act

## 5 U.S.C.A. App 2

- FACA Governs the Establishment, Operation, and Termination of Advisory Committees – enacted in 1972
  - Committee Establishment
    - Required by Statute
    - Presidential Authority
    - Authorized by Statute
    - Agency Authority
  - Operations / Management
    - Designated Federal Officer – DFO / Committee Management Officer - CMO
    - Meetings of committees and subcommittees
    - Record retention
  - Duration of Advisory Committees
    - Automatically terminates two years after establishment, unless renewed
    - Standards Board Members serve until replaced



# BOARD MEMBERSHIP DUTIES AND RESPONSIBILITIES

- Participate in meetings and on subcommittees
- Comport yourself with integrity so as not to trade upon your position as a member of an EAC advisory board for your own personal benefit.
- Not use your service as a representative on the board to promote yourself, your services or products or those of other private parties.
- The law also requires that any permissible direct communications with Congress, **in your official capacity as a board member**, be made only through official channels of EAC.



# BOARD MEMBER DUTIES AND RESPONSIBILITIES

- Federal law prohibits you from being a federally registered lobbyist.
- These restrictions do not prohibit you from lobbying members of Congress or state legislatures, or urging others to do so, **on your own time in your personal capacity.**
- If you lobby Congress or state legislatures in your personal capacity and the issue is related to EAC Board business, **you should make it clear that you are not representing an EAC advisory board and not acting in your official capacity** as an Advisory Board member.



# General Committee Management Guidance

- Agency heads are required to appoint Designated Federal Officials (DFOs) who are responsible for management and supervision of agency committees.
- Committees must have a charter filed with EAC, Senate and House committees having Legislative jurisdiction, the Library of Congress, and Committee Management Secretariat before conducting committee business. (41 CFR 102-3.70)
- Charters must be renewed every two years or be terminated under the sunset provisions of Section 14 of the Act, unless otherwise provided by law.



# General Committee Management Guidance

- Generally, advisory committee member selections are to be balanced in terms of the point of view represented and the geographical representation.
- Meetings are required to be open to the public, except for subcommittee meetings. Meeting locations must accommodate public access and participation.
- The DFO approves all committee and subcommittee meetings and agendas.
- The DFO posts all agendas and minutes to the website and attends all meetings; adjourns any meeting when it is in the public interest; and chairs meetings when directed to do so.





# General Committee Management Guidance

Detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, will be kept and must contain:

- Date, time and location of meetings.
- A record of attendees present, including guests and members of the public who present oral or written statements;
- A complete and accurate description of each matter discussed, conclusions reached, if any, by the advisory committee regarding such matter and any advice and recommendations provided by the committee. (41 CFR 102-3.165)

(Any closure of meetings must be made in advance with public notice by the DFO)



# EAC Officers

## Designated Federal Officers (DFO)

### Standards Board

Commissioner Donald Palmer

[Dpalmer@eac.gov](mailto:Dpalmer@eac.gov)

### Board of Advisors

Commissioner Thomas Hicks

[Thicks@eac.gov](mailto:Thicks@eac.gov)

### Technical Guidelines Development Committee

Commissioner Benjamin Hovland

[BHovland@eac.gov](mailto:BHovland@eac.gov)



# Applicable Laws & Regulations

- Federal Advisory Committee Act. 5 U.S.C.A. App 2, et seq.
- Federal Advisory Committee Management Regs. 41 C.F.R. 102-3 et seq.
- Prohibition on Appointment of Lobbyists to Federal Boards and Commissions (OMB Final Guidance 76 FR 61756), dated August 13, 2014.
- The Freedom of Information Act. 5 U.S.C. §552



# Questions?

