

**Federal Advisory
Committee Act:
Summary of What BLM Staff Need to Know
When Working With ADR-Based
Collaborative
Community Working Groups**

**Bureau of Land Management
Alternative Dispute Resolution
and Conflict Prevention Program**

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Summary of FACA and Guidance

What is FACA?

The Federal Advisory Committee Act (FACA) provides an orderly procedure for Federal agencies to seek advice and assistance from citizens and experts. Any time a Federal agency intends to establish, control, or manage an advisory group, the agency must comply with FACA and administrative guidelines developed by the General Services Administration (GSA) and the Bureau of Land Management.

BLM involvement in a working group often does not trigger FACA. When you design and participate in ADR-based collaborative community working groups, it is important to understand whether a group does or does not qualify as an advisory committee under FACA. This brochure offers some basic guidance. More in-depth information can be found in the BLM FACA Guidebook, available from the BLM ADR and Conflict Prevention Program in hard copy and online at <http://www.blm.gov/adr>.

Guidance for Meeting with Groups

If participants in your collaborative group are solely Federal, Tribal, State, or local government employees operating in their official capacities, the group is exempt from the administrative requirements of FACA.

If participants include nongovernment members and they will meet regularly or formally, you have two options without needing to obtain a FACA charter:

1. Ensure that the BLM does not establish, manage, or control the group. Ensure that the BLM does not make decisions on or otherwise control group membership, send out meeting invitations, or host the meeting. Ensure that the BLM does not manage or control the group's agenda. Limit the BLM's role to that of a group participant; avoid taking a leadership role in the group. If facilitation is necessary to run meetings, encourage the group to hire a neutral facilitator who is not connected with the BLM.

Funding the group or holding a disproportionate number of the group's meetings on BLM property may be seen as indicators of management or control.

2. If the BLM establishes, manages, or controls the group, ensure that its purpose is not to create group advice or render specific group recommendations to the agency. Seek only information, not advice, from the group as a whole. Seek advice only from individual members within the group; make clear to the group that you will not accept advice from the group as a whole and that the purpose of the meeting is not to establish group-based advice on the issues. Ensure that meetings that are not ad hoc are well publicized and membership remains open to all. A town hall-style meeting works well.

Alternatively, if you wish to have a central role in the formation and agenda of the group, consider pursuing a charter for a FACA committee. Refer to your Solicitor's Office for when you need a charter or your Committee Management Officer (CMO) for details on how to charter a FACA committee.

Alternatives to FACA-Chartered Groups

- The BLM can establish a working group with solely government entities—other Federal, Tribal, State, and local government employees working in their official capacities.
- One of the non-Federal entities involved can take the lead in organizing and setting up the group. FACA only applies to Federal agencies, so if a Tribal, State, County, or local agency or public interest group is willing to put the collaborative group together, control membership, and set up meetings, the BLM can participate without violating FACA.
- In some situations, the BLM can form a working group as a subcommittee of a preexisting Resource Advisory Committee (RAC) or other FACA-chartered advisory committee. Make sure the working group always reports to the RAC or chartered committee and not directly to the BLM.
- Sometimes group advice is not the desired outcome—the BLM only needs input from a variety of public stakeholders. Or sometimes the BLM needs to educate the community about its programs and decisions. Here the best approach may be to hold town hall-style meetings with open public participation. Such meetings will not violate FACA as long as the BLM is not seeking group advice, but rather is sharing information or seeking a range of advice from individuals.

Meetings of ADR-based collaborative community working groups should adhere to general open government criteria: invite the public to meetings; publish timely notice in local forums; accept public comments; and keep records of group meeting minutes, attendance, and other documents used by the group.

What Else Should I Know?

The BLM has a more in-depth guidebook and other resources available online at <http://www.blm.gov/adr> to help you navigate through FACA in designing, convening, and participating in ADR-based collaborative community working groups. You can also seek advice about FACA from your Solicitor's Office and information about how to charter a FACA committee from your FACA Committee Management Officer (CMO). You should also consult the BLM's advisory committee regulations if you charter or manage a FACA committee or subcommittee. Other resources, including relevant FACA documents and a case law database, are available on GSA's website at <http://www.gsa.gov>.

Does FACA Apply?

Indicators for determining the applicability of the Federal Advisory Committee Act (FACA) to the Bureau of Land Management's Alternative Dispute Resolution-based Collaborative Community Working Groups

Q.1. Will the group solely comprise members who are full- or part-time Federal employees or Tribal, State, or local government employees acting in their official capacities?

Yes – FACA will not apply

No – go to Q.2

Q.2. Will the BLM “establish” the group?

- Will the BLM play a primary role in establishing the group? Or
- Will the BLM set the group's membership or agenda?

No – go to Q.3

Yes – skip to Q.4

Q.3. Will the BLM “utilize” the group?

- Will the BLM assume authority over a group established by others? Or
- Will the BLM assert actual management or control over the group's structure and operations?

No – FACA will not apply

Yes – go to Q.

Q.4. Will the group offer specific advice or recommendations to the BLM?

- Sharing information or monitoring conditions is not enough to implicate FACA
- Recommendations to other non-Federal bodies or private landowners will not implicate FACA
- Members expressing individual views (as opposed to group advice) will not implicate FACA

No – FACA will not apply

Yes – FACA will apply

Note: This chart was derived from a decision tree published in the Administrative Law Journal in 1996, included in the Further Information section at the end of this guidebook.

Frequently Asked Questions About FACA

Do we risk violating FACA if we meet just once with a group of stakeholders to discuss land management issues?

Generally, no, if the group initiates the meeting or if the format is town hall style. FACA will also not be triggered if you meet one-on-one with a stakeholder as opposed to meeting with a group. FACA may apply if the agency establishes, manages, or controls the group or suggests subsequent meetings with the group to discuss issues. Even a one-time meeting can violate FACA if the BLM organizes the meeting and seeks the group's analysis of issues or a recommended course of action for the agency.

Does FACA apply to meetings with permittees or contractors?

No, as long as the discussion is limited to routine matters directly related to the permit or contract. Additionally, FACA won't apply if the meeting is solely intragovernmental and contractors are present but not part of the meeting.

What about "meetings" on the Internet?

Treat such meetings the same as any other kinds of gatherings; avoid organizing a group for the purpose of soliciting consensus opinion or reaching a decision on policy issues.

To what extent can the agency host and facilitate meetings and provide logistical support?

It is acceptable to provide in-kind or financial support for facilitation and to allow meetings to occur in Federal buildings. Be cautious not to imply that the agency wishes to control the group's membership or agenda in exchange for providing a meeting place or logistical support. Furthermore, be sure that in providing a meeting place or support that you do not in any way appear to be hosting an advisory committee. Hosting occasional meetings may be seen as more neutral than hosting every meeting of a group.

What precautions can we take to avoid FACA challenges?

Refer to the best practices section of the BLM's in-depth guidebook for specific suggestions. Most important, make sure to practice good public involvement at every stage of your process. Stakeholders who feel that their voices are heard and respected are less likely to threaten or pursue a FACA challenge. FACA should not be cited as a reason to avoid meeting with a group of concerned citizens.

When should we pursue chartering an advisory committee?

When you find it necessary to take on a leadership role in soliciting group advice or recommendations from a group.

Do I need a FACA charter if my advisory group was not established by the BLM but required by legislation?

Yes, unless the legislation specifically makes FACA inapplicable.

If a Resource Advisory Committee (RAC) sets up a subcommittee, is it subject to FACA or exempt from FACA's procedural requirements?

RAC subcommittees are exempt from FACA's procedural requirements as long as they report back to the parent RAC and not directly to the BLM. However, a RAC subcommittee's purview must be consistent with the FACA committee's charter and follow the BLM's advisory committee regulations specifying formation, membership, and scope requirements.

Can the BLM fund group members' travel without implicating FACA?

The answer to this question is unclear, as funding is one very significant factor that may strongly indicate that the agency is controlling or managing a group's agenda or membership, particularly if similar group members benefit from funding on a regular basis. Look for alternatives to funding group travel whenever possible, as it is not yet clear what implications funding travel may have on determining whether a group is subject to FACA.

Where can we get more detailed information on FACA's application in particular situations?

The BLM has an in-depth field guide with more detailed information available at <http://www.blm.gov/adr>. Relevant FACA documents and a case law database are also available on the General Services Administration's website at <http://www.gsa.gov>. Consult your FACA Committee Management Officer (CMO) for more specific information about obtaining a FACA charter or your Solicitor's Office for legal advice.