



OFACP Policy:

Use of Electronic Communications by NIH Advisory Committees

April 2011

Background:

In 2001, the Federal Advisory Committee Management Final Rule (41 CFR Parts 101-6 and 102-3) revised the definition of committee meeting to mean any “gathering” of advisory committee members whether in person or through electronic means. An electronic or “virtual” meeting includes those held by teleconference, videoconference, the internet, or any other type of electronic medium. Meetings held by telephone or video conference are common practice at NIH as they are convenient and cost-efficient tools for conducting specific types of advisory committee activities at NIH. As technology has improved, the internet has also become a useful method for conducting certain types of advisory committee meetings. Meetings conducted through the internet have been termed Internet Assisted Meetings (IAM) at NIH. This policy announcement has been revised to expand and clarify the extent to which any type of electronic communication may be used to conduct meetings of Federal advisory committees, subcommittees, and working groups.

Policy Statement:

Federal advisory committee meetings, both those subject to the Federal Advisory Committee Act (FACA) and those exempt, may be held through electronic means. Advisory committee and subcommittee meetings held electronically (telephone, video, or internet) are subject to all of the laws, regulations and NIH policies governing the operation and management of federal advisory

committees and their activities (and, when applicable, the laws, regulations, and NIH policies governing peer review). A closed IAM must use secure, NIH-approved software that includes a firewall that protects the discussions and any scoring from unauthorized access. An open IAM may use any appropriate Institute/Center (IC) or Office of the Director (OD) web-based systems. Honoraria for members participating in meetings held electronically are limited to the designated meeting periods only.

Discussion and Guidelines for Meetings Subject to FACA:

Under the provisions of the FACA, 5 U.S.C., as amended, the Executive Branch agencies of the Federal Government are required to allow the public access to advisory committee meetings unless an exemption under the Government in the Sunshine Act, 5 U.S.C. Sec. 552b, is authorized. Electronic means may be used to conduct both open and closed Federal advisory committee meetings. The electronic format must support member deliberation on matters under consideration and, if the meeting is open, public access. All meetings, including those held electronically, are subject to FACA and must be conducted according to the law, regulations and NIH policies governing federal advisory committees.

NOTE: This guidance supersedes all previous issuances related to the use of electronic communications by advisory committees. This policy has been modified to provide updated guidance on all types of meetings held through electronic means as well as the terms used to identify and code individual meetings.

The primary requirements include:

- Meeting notices are published in the Federal Register at least 15 calendar days in advance of the meeting
- Begin and end dates, as well as times, are included in the meeting notice
- Appropriate conflict of interest certifications or financial disclosure reports are reviewed and approved by NIH officials prior to the meeting
- Record keeping requirements of FACA are completed
- A Designated Federal Official (DFO) approves the agenda and attends the meeting (monitoring electronic communication during the entire meeting, even if it takes place for more than one day)
- A quorum of members is present
- All committee deliberations and discussions (including review of applications or proposals) occur within a defined period of time during which the DFO monitors continuously the online discussion and posting of votes (scores)
- Voting must take place during the meeting and may not be done by mail ballot, including e-mail
- Minutes are prepared and certified by the Chair within 90 days of the meeting and a list of attendees is attached to the minutes

If the advisory committee meeting is open to the public, the following additional requirements must be met:

- The public is allowed to observe, in real time, the committee meeting in progress
- Meeting documents (e.g. roster, agenda, reports, reference material) are made available to the public on or before the meeting date

The public is given an opportunity to submit comments prior to the meeting or a public comment period is part of the meeting.

Discussion and Guidelines for Non-FACA Meetings:

Non-FACA meetings, such as certain working groups, may also conduct their meetings through electronic means. It is highly recommended that a DFO be present at all non-FACA meetings, and that these meetings are open to the public and announced in the Federal Register. Proper record keeping procedures must be maintained by Federal staff. Relevant issues and facts gathered during a non-FACA working group meeting must be fully discussed by the parent committee in open session before advice is given to a Federal official.

General Information:

Detailed information on NIH Federal Advisory committee record keeping policies and specific guidance related to electronic communication can be found in NIH Manual Chapter 1743, Keeping and Destroying Records, Section 1100 G (Federal Advisory Committee Records). Electronic documents which are made available to or prepared for or by an advisory committee are subject to the Freedom of Information Act (FOIA), 5 U.S.C., Section 552b and FACA. These documents must be made available for public inspection and copying upon request unless exempt under FOIA. Documents such as e-mail communications and exchanges created by participants in chat rooms or web-based meetings are bound by these laws. OD and the ICs are also responsible for ensuring the security and confidentiality of reviews and discussions being held electronically.

This policy is effective immediately.

Questions on this policy should be referred to the Office of Federal Advisory Committee Policy, (301) 496-2123