



DIRECTOR OF ADMINISTRATION AND MANAGEMENT
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

May 21, 2021
Incorporating Change 1, April 19, 2022

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Directive-type Memorandum (DTM) 21-002 – Federal Advisory Committee Management Program Ethics Responsibilities

References: See Attachment 1.

Purpose. In accordance with the authority in DoD Directive 5105.53; the authority of the November 26, 2018 Deputy Secretary of Defense (DepSecDef) Memorandum; and the authority and guidance in DoD Instruction (DoDI) 5105.04 and DoD 5500.07-R, this DTM:

- Supplements DoDI 5105.04 to clarify government ethics responsibilities for the DoD Federal Advisory Committee Management Program.
- This DTM is effective May 21, 2021; it must be incorporated into DoDI 5105.04. This DTM will expire effective May 21, 2023.

Applicability. This DTM applies to:

- OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense.
- All DoD Federal advisory committees and subcommittees (collectively referred to in this DTM as “advisory committees”) consisting of individuals who are not full-time or permanent part-time Federal civilian officers or employees, or active duty Service members that are established and utilized by the DoD.

Policy. In accordance with the November 26, 2018 DepSecDef Memorandum, DoDI 5105.04, and DoD 5500.07-R, with regard to government ethics, it is DoD policy that all individuals invited or appointed to serve as a member on a DoD advisory committee or subcommittee subject to Appendix, of Title 5, United States Code (U.S.C.) (also known and referred to in this issuance as the “Federal Advisory Committee Act” (FACA)), including advisory committee staff, must comply with applicable Federal ethics laws, regulations, and policies, including Part 2635 of Title 5, Code of Federal Regulations (CFR).

Responsibilities. See Attachment 2.

Summary of Change 1. This change extends the expiration date for the DTM to May 21, 2023.

Procedures. See Attachment 3.

Releasability. Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

A handwritten signature in black ink that reads "Michael B. Donley". The signature is written in a cursive, slightly slanted style.

Michael B. Donley
Director

Attachments:
As stated

ATTACHMENT 1

REFERENCES

Code of Federal Regulations, Title 5
Code of Federal Regulations, Title 41
Deputy Secretary of Defense Memorandum, "Advisory Committee Management,"
November 26, 2018
DoD 5500.07-R, "Joint Ethics Regulations," August 30, 1993, as amended
DoD Directive 5105.53, "Director of Administration and Management," February 26, 2008
DoD Instruction 5105.04, "Department of Defense Federal Advisory Committee Management
Program," August 6, 2007
United States Code, Title 5

ATTACHMENT 2

RESPONSIBILITIES

1. DESIGNATED FEDERAL OFFICERS (DFOS). Under the authority, direction, and control of the DoD Sponsor, the Director of Administration and Management (DA&M), and the Advisory Committee Management Officer, the DFOs:

a. Establish internal management controls to ensure no advisory committee member can perform any advisory committee-related work unless the individual's appointment or renewal of appointment is approved, and all on-boarding requirements are submitted and processed in accordance with DoD policy and procedures, including completing required ethics training and financial disclosure reports.

b. Establish standard operating procedures to ensure appointment or renewal of appointment documents are collected from each prospective and incumbent advisory committee member, and are transmitted to the required offices for review and processing at least 60 business days before the next scheduled advisory committee meeting that member is expected to attend.

c. Maintain calendar-year training records for all advisory committee members and staff as determined by the component ethics counsel.

d. Oversee compliance with the requirement for each advisory committee member to receive ethics training before attendance at the first meeting following the member's appointment or renewal of appointment.

e. Schedule in-person ethics training to ensure required ethics training is provided during at least one advisory committee meeting per calendar year unless no meetings occur during that year. Such training should be provided at the first meeting of the calendar year.

f. Notify the responsible ethics counsel for the advisory committee of any allegations of potential misconduct by advisory committee members or staff personnel.

g. Submit monthly advisory committee member rosters to the appropriate component ethics counsel that provide the following information on each individual:

- (1) Name.
- (2) Original appointment date.
- (3) Most recent renewal of appointment date.
- (4) Most recent financial disclosure filing date (if not exempt).
- (5) Ethics training date(s) for current calendar year.
- (6) First meeting date for current calendar year.

h. Assist component ethics counsel in responding to requests from outside entities, such as Congress and the Office of Government Ethics (OGE), including:

(1) Providing data necessary to complete questions pertaining to individuals appointed to advisory committees subject to the FACA contained in OGE's Annual Agency Ethics Program Questionnaire.

(2) Responding to questions and providing necessary data pertaining to individuals appointed to advisory committees subject to the FACA in response to OGE Agency Ethics Program reviews of DoD Components.

ATTACHMENT 3

PROCEDURES

1. In accordance with the November 26, 2018 DepSecDef Memorandum, only the Secretary of Defense (SecDef) or the DepSecDef has the authority to appoint or invite individuals to serve on DoD advisory committees or subcommittees and to approve annual renewals for all committee and subcommittee members. All individual members are appointed to serve as either a special government employee or regular government employee member unless otherwise provided for by statute.

a. Individuals who are not full-time or permanent part-time Federal civilian officers or employees, or active duty Service members appointed as experts or consultants in accordance with Section 3109 of Title 5, U.S.C., to serve as a special government employee member.

b. Individuals who are full-time or permanent part-time Federal civilian officers or employees, or active duty Service members are appointed in accordance with Section 102-3.130(a) of Title 41, CFR, to serve as a regular government employee member.

c. An individual's appointment to an advisory committee is considered expired if more than 365 days have passed since the individual's last appointment or renewal of appointment. If an individual's appointment expires or is not renewed, then the individual cannot participate in any advisory committee work, meeting, or deliberations.

2. Each member appointed to a DoD established or utilized advisory committee must file a financial disclosure report as part of their appointment or renewal of appointment process unless an exemption applies as determined by the appropriate component ethics counsel.

a. The component ethics counsel for the advisory committee will determine which financial disclosure report will be submitted:

(1) OGE Form 450, "Confidential Financial Disclosure Report," (or approved alternate); or

(2) OGE Form 278, "Public Financial Disclosure Report."

b. A new advisory committee member may not be sworn in and a returning member may not participate in any advisory committee work until the required financial disclosure report is properly submitted and certified.

3. Financial disclosure reports must be completed in accordance with OGE and DoD regulations and policy, provided reports must be legible and clearly identify reportable interests.

a. To facilitate communications regarding report data, the DFO must provide current member email addresses to the appropriate component ethics counsel along with the report and will advise the member to check for such communications.

b. All completed financial disclosure reports must be protected from unauthorized access or disclosure, with official copies retained only by the responsible ethics office.

c. Unless another individual has been designated by ethics counsel, the DFO is the intermediate supervisory reviewing official for financial disclosure reports and must review all financial disclosure reports to determine if the reported financial interests would create a potential conflict of interest with committee duties. When determining whether a potential conflict of interests exists, the DFO must consult with the component ethics counsel. The DFO's review and ethics counsel's certification must take place before the individual's appointment or renewal of appointment.

d. If a conflict of interest exists, the DFO must consult with the component ethics counsel to determine appropriate remedial action, including whether a waiver, authorization, or recusal is required. The DFO must notify the advisory committee if any conflict of interest waivers, authorizations, or recusals have been issued to a member at a properly noticed meeting of the advisory committee. Such notification will only include the member's name and type of remedial action taken.

GLOSSARYPART I. ABBREVIATIONS AND ACRONYMS

ACRONYM	MEANING
CFR	Code of Federal Regulations
DA&M	Director of Administration and Management
DepSecDef	Deputy Secretary of Defense
DFO	Designated Federal Officer
DoDI	DoD instruction
DTM	directive-type memorandum
FACA	Federal Advisory Committee Act
OGE	Office of Government Ethics
SecDef	Secretary of Defense
U.S.C.	United States Code

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
advisory committee	<p>Except as specifically exempted by the FACA or other statutes, or as not covered by Sections 101-6 and 102-3 of Title 41, CFR, any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.</p> <p>Within DoD, the DA&M exercises the SecDef's statutory and regulatory authorities pertaining to the FACA, including authority for DoD to establish and utilize a Federal advisory committee subject to the FACA.</p>

TERM	DEFINITION
DFO	Defined broadly in Section 102-3.25 of Title 41, CFR. Within the DoD, the DoD Sponsor appoints a DFO who must be a full-time or permanent part-time Federal civilian officer or employee, or active duty Service member employed by the DoD and assigned to the DoD Sponsor's organizational structure.
DoD Sponsor	The DoD Component head designated by the DA&M to sponsor a DoD Federal advisory committee. DoD Sponsors are defined as the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and the Office of the Secretary of Defense Principal Staff Assistants.
subcommittee	<p>A group, generally not subject to the FACA, that reports to an advisory committee and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee.</p> <p>The DoD has traditionally recognized that the name of the subcommittee does not matter and that it is established and utilized by DoD to provide recommendations to the parent committee on matters defined by DoD unless otherwise provided for by statute or Presidential directive. Only the SecDef, DepSecDef, DA&M, or DoD Sponsor can approve the establishment of and task a subcommittee with written terms of reference unless otherwise provided for by statute or Presidential directive.</p> <p>Subcommittees may not work independently of the parent advisory committee and must report all of their recommendations and advice solely to the parent advisory committee for its thorough deliberation and discussion at a publicly noticed and open advisory committee meeting subject to Section 552b of Title 5 U.S.C. (the "Government in the Sunshine Act"). Subcommittee, including any of their members, have no authority to make decisions and recommendations on behalf of the parent advisory committee, or to provide updates or report directly to the DoD or any Federal officer or employee whether orally or in writing.</p>