



Tech Policy Primer



FTC Technology Advisory Committee Guide

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ABOUT THE TECH POLICY PRIMER

The Tech Policy Primer, a program of the Aspen Tech Policy Hub, is a 10-week, part-time program that trains science and technology experts on the policy process.



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Introduction

Technology has become an especially difficult regulatory challenge at the Federal Trade Commission (FTC). The rate of innovation and technology adoption poses risks to consumers and fair market competition, and requires regulators to adapt to a constantly changing environment. This guide proposes that the FTC establish a Technology Advisory Committee (TAC) under Federal Advisory Committee Act (FACA) authorities. The TAC would provide the FTC with a new tool to inform the agency on activities pertaining to technology.

PURPOSE

The FTC [lacks the volume of technical experts](#) to [properly meet its regulatory obligations](#) in the digital era. As a result, legal experts are often forced to become experts in technical fields, which distracts them from legal matters; increases operating inefficiencies across the agency; and reduces their capacity to address key challenges like [identify theft](#), [discriminatory algorithms](#), [data privacy](#), and [anticompetitive practices](#).

The [federal government](#) and [civil society](#) have identified and are already working to rectify the shortage of technologists within government. However, the FTC is not currently using all tools at its disposal. For instance, advisory committees are a low-cost way for the FTC to get insights and recommendations from technology specialists; however, the FTC has not [convened an advisory committee since 2000](#).

The purpose of a TAC is to advise on science and technology topics pertaining to investigations, cases, compliance, public policy, and agency strategy. TAC members could provide deep subject matter expertise and industry insight to help the FTC address current regulation challenges involving technology, and prepare the agency for new technologies that could impact consumers and fair market competition. Such experts could be retained without incurring the cost of a senior career official or consultants.

The information in this guide can also be used by other government agencies interested in setting up technical advisory committees.

GOALS

The goals of an FTC TAC would be to:

- ▶ Connect the FTC (or other agencies) with industry, academia, and civil society experts who can provide insights into technology trends, concerns, and opportunities;
- ▶ Help the FTC and other agencies address long-term strategic goals by designing proactive policy, crafting educational materials, reviewing industry research, and raising awareness of emerging issues across technology sectors;
- ▶ Help the FTC meet short-term goals by aiding investigators, lawyers, and FTC technology experts on remedies and monitoring compliance; and
- ▶ Help the FTC identify and respond to technology-driven marketplace changes and promote its [vision](#) of a “vibrant economy fueled by fair competition, open markets, and an empowered, informed public.”



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HOW TO USE THIS GUIDE

This guide provides an overview of TACs; a process for establishing and managing the Committee and Subcommittees; and recommendations for use. The guide includes recommendations for assembling and running the Technology Advisory Committee, including:

- ▶ Committee structure and operation recommendations;
- ▶ The committee member selection process;
- ▶ Ethical considerations for committee members;
- ▶ Effectiveness criteria; and
- ▶ Cost and other financial considerations.

The Appendix provides resources for creating an Advisory Committee, tailored to the FTC’s needs. This includes:

- ▶ A checklist for establishing the TAC;
- ▶ Relevant laws, regulations, and reporting requirements; and
- ▶ Sample materials, including a Charter and a Membership Balance Plan.

Administration

The TAC needs strong strategic and executive leadership to produce actionable advice. The impact of the TAC would depend on the degree to which its administration can move beyond compliance and risk management in order to embody strategic vision.

Figure 1 illustrates the administrative hierarchy of the TAC; Table 1 describes the roles and duties.

Figure 1: Advisory Management Organization Chart

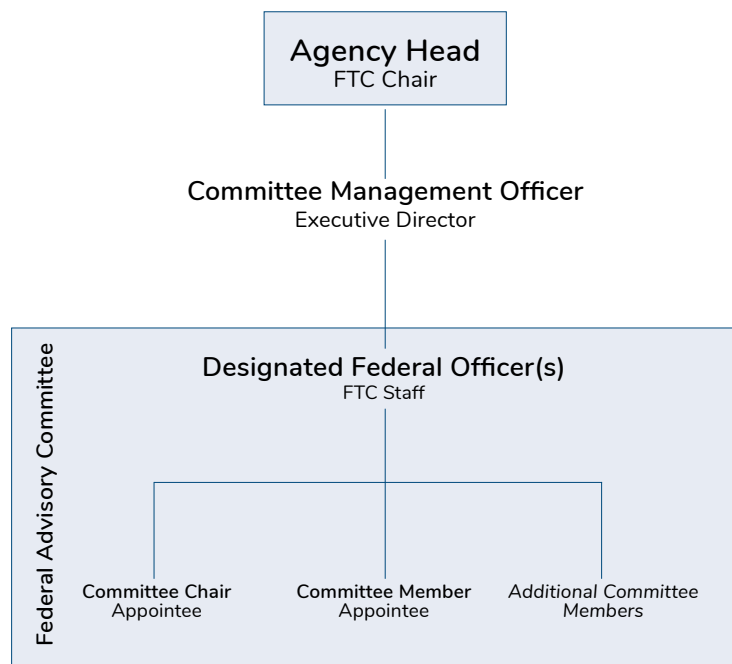


Table 1: Committee Roles and Duties

Role	Duties	Appointment Notes
Agency Head	The Agency Head (FTC Chair) is responsible for ensuring that the FTC’s FACA program complies with all relevant laws and regulations. Agency heads designate Committee Management Officers (CMOs). For more information, see 41 CFR § 102-3.105 .	This role is filled by the FTC Chair.
Committee Management Officer (ACMO)	The Committee Management Officer (Executive Director) is responsible for establishing guidelines and managing the FTC’s committee management program, as outlined in 5 U.S.C. App., § 8 and 41 CFR § 102-3.115 .	This role is filled by the Executive Director.
Designated Federal Officer(s) (DFOs)	Designated Federal Officers (DFOs) are Federal Government employees that oversee and manage the committee’s day-to-day operations. DFOs perform administrative actions, convene committee meetings, and serve as the point of contact between the FTC and the TAC Chair. See 5 U.S.C. App. § 10 for more information.	The FTC should appoint multiple DFOs to the TAC, with at least one DFO serving each subcommittee. This allows the DFOs to move beyond simple administrative functions and provide meaningful direction and input to the TAC and its subcommittees.
TAC Chair	The TAC Chair recruits members, leads meetings, and serves as liaison between the Committee and the FTC.	See TAC chair section on page 12.
Committee and Subcommittee Members	Committee members perform research and advise the FTC through the TAC Chair and DFO(s).	See Committee and Subcommittee Members on page 13 below.



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TAC CHAIR

The TAC chair needs the skills and experience necessary to effectively lead the Committee. This includes recruiting diverse members, effectively utilizing members’ experience to generate actionable recommendations, and translating these recommendations into action at the FTC. Each stage requires distinct skills as outlined in Table 2.¹

Table 2: Chair Qualifications

Building an accomplished committee	Effectively running committee	Translating committee expertise and recommendations into action
<ul style="list-style-type: none"> ▶ Network and prestige necessary to attract potential members ▶ Experience recruiting diverse, effective teams 	<ul style="list-style-type: none"> ▶ Capacity and enthusiasm for high engagement with the Committee ▶ Experience operationalizing diverse groups into effective teams ▶ Limited reputational risks or conflicts of interest ▶ Open-minded 	<ul style="list-style-type: none"> ▶ Understanding of FTC needs ▶ Ability to generate buy-in from senior FTC officials ▶ Ability to translate FTC problems to technical experts and to translate technical input to FTC policymakers

METHOD FOR CHAIR SELECTION

The FTC should initially appoint a chair who has institutional knowledge of FTC operations; has connections to FTC leadership; is prominent in the technical community; and operates with integrity.² Visibility in the FTC would help the chair develop buy-in from senior leaders, and visibility in the technical community would increase the prestige of the committee, helping the chair to recruit well-regarded technical experts.³ A think-tank fellow with prior senior-level experience at the FTC may be a strong choice as chair.

COMMITTEE AND SUBCOMMITTEE MEMBERS

The Committee should comprise between 15 and 25 members with Subcommittees comprising 3 to 7 members. These members should be recognized technology experts in sectors related to the FTC’s duties, support the missions of the FTC, and be appointed in line with the Membership Balance Plan. TAC members would serve for an initial period of 2 years, renewable in line with the legal and policy framework. The Executive Director should approve final candidates with input from advisors and other FTC stakeholders. Additional senior-level or Commissioner approval should be obtained as necessary.

NOMINATION PROCESS

The FTC should use a hybrid nomination approach that both recruits individuals directly and allows for self-nominations. This approach allows FTC/TAC leadership to proactively recruit well-regarded individuals with specific desired expertise without excluding voices who come from circles not typically found in the FTC or the committee leadership’s search pool. The self-nomination pro-

cess is especially valuable for attracting individuals with both technical backgrounds and interest in the FTC’s consumer protection mission, as it does not require the FTC to have preexisting knowledge of individuals with a background and interests in niche fields. Members can be selected from academic institutions, nonprofits, government agencies, or federally funded research centers.

DIVERSITY REQUIREMENTS

To be effective, the TAC should consist of diverse members and take advantage of this diversity to better consider how technology issues would impact the set of communities that the FTC protects.⁴

The Membership Balance Plan incorporates two principal axes of diversity:

- ▶ Diversity of technical background and training, including a varied and complementary set of technical expertise; academic, government, and private sector training and current affiliations; and experience and current affiliation in small, medium, and large organizations; and
- ▶ Diversity of lived experience and community membership, including age and seniority; underrepresented groups, such as ethnic minorities, women, and individuals with disabilities; and geographical area.

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Structure

The TAC should comprise a central Committee and at least five subcommittees to start. The central Committee would help set the strategic direction and agenda of the overall effort, while the subcommittees would bring together domain-specific expertise in relevant areas of technology. The Committee should reflect a broad range of technical topics, while the subcommittees should gather specialized technical expertise in sectors related to the FTC’s duties.

COMMITTEE

The Committee should reflect a broad range of technical and professional experience. It should include technologists as well as economists, legal experts, and investigative professionals with experience in the technology sector.

The FTC and TAC leadership would bring problems before the Committee with the expectation of receiving clear, unbiased, and informed recommendations from the TAC. For example, the FTC might use the central TAC committee to help the agency:⁵

- ▶ Understand how the novel economic features of technology-driven marketplaces will impact its mandate in various sectors;
- ▶ Understand and evaluate the impact of its interventions and decisions not to intervene;
- ▶ Identify challenges and opportunities for effective action in changing marketplaces;
- ▶ Understand when markets are tipping and where there might be scope for rapid and effective interventions to avoid harm and promote competition;
- ▶ Define when companies have strategic or enduring market status and/or bottleneck power;
- ▶ Predict and understand where harm to innovation and impacts on competition might arise as a result of marketplace developments, practices, or transactions; and
- ▶ Facilitate international cooperation, exchanges, and mutual learnings.

The Committee would also manage subcommittees, acting as the link between subcommittees and the FTC. The Committee would coordinate and integrate the work of the subcommittees and formulate recommendations based on subcommittee reports. Finally, it could make recommendations for the creation of new subcommittees.

SUBCOMMITTEES

Subcommittees should comprise subject matter experts in technology fields that impact competition and consumer welfare. Subcommittees can be added and removed as necessary to meet FTC goals. Subcommittees can consist of TAC members or members from other subcommittees but are not required to be members of the central Committee. Table 3 describes the five recommended standing subcommittees.

CLOSED SUBCOMMITTEES

Although subcommittees are exempt from standard public disclosure requirements (see Transparency section), the TAC’s standing subcommittees should adhere to openness requirements as much as possible. When the FTC wants TAC input on proprietary or confidential information pertaining to specific investigations, litigation, or compliance issues, the CMO can create a closed subcommittee at the request of the TAC Chair.

To convene a closed subcommittee, the TAC Chair should send an action memorandum to the CMO that includes:

- ▶ The subcommittee that is requested to convene;
- ▶ The specific FTC activities that should be considered;
- ▶ The scope of the discussion, including specific questions or topics;
- ▶ The meeting agenda;
- ▶ Confidential documents, data, or other information that may be disclosed to subcommittee members during the meeting;
- ▶ A proposed date, time, and venue to convene the committee; and
- ▶ A list of any subcommittee members who have a conflict of interest and cannot participate.

Table 3: Five Subcommittees

Name	Mission	Past Cases and Settlements	Example Discussion Topics
Data Security & Privacy Subcommittee (DSP)	Provide expert input on wrongful sales and access of data to third parties, including: violations of the Children’s Online Privacy Protection Act (COPPA); violations of Health Insurance Portability and Accountability Act (HIPAA); and illegal data collection.	FTC Report on Resources Used and Needed for Protecting Consumer Privacy and Security Ascension Data Analytics, In the Case of (Dec 2021) Flo Health, Inc (June 2021) Musical.ly Inc (Feb. 2019)	How can the FTC teach parents about the data and privacy rights of their children?
Financial Technology & Cryptocurrency Subcommittee (FinTech)	Provide expert input on technology systems for financial transactions as well as cryptocurrency, crowdfunding, and blockchain.	Beam Financial Inc (March 2021) Fidelity National Financial Inc (July 2014)	Should crypto staking services like PoolTogether be subject to Federal Lottery Laws?
Artificial Intelligence & Surveillance Subcommittee (AIS)	Provide expert input on algorithms and algorithmic bias, facial recognition, biometrics, and surveillance technology.	Everalbum Inc (May 2021) Using Artificial Intelligence and Algorithms, FTC blog (April 2020)	As researchers develop new approaches to reverse-engineering deep neural networks , what steps should companies take to ensure that sensitive training data is not exposed?
Hardware & Networking Subcommittee (HAN)	Provide expert input on semiconductors, broadband and cloud infrastructure, and Internet of Things. Hardware repair also falls under this committee.	AT&T Mobility LLC (Nov 2019) Qualcomm Inc (Nov 2019) Support King, LLC (May 2019)	How does the FTC prevent companies selling smart appliances from practicing planned obsolescence and refusing to upgrade appliance software?
Digital Commerce and Advertising Technology Subcommittee (DCAT)	Provide expert input on digital marketplaces, advertising technology, and the attention economy.	The True Cost of Amazon’s Low Prices (Vox Recode, Jan 2022) Surescripts LLC (April 2019)	How do small businesses know if the impressions ad platforms that charge them for are real ?

Oversight

TRANSPARENCY

The public nature of the TAC’s work and its balanced and expert representation should help raise awareness and build trust in the FTC’s ability to fairly and effectively fulfill its mandate in a changing technological environment.

FACs are required to share records with the public and make their meetings accessible. However, exemptions under both the [Government in the Sunshine Act](#) and the [Freedom of Information Act](#) provide scope for closed subcommittees to discuss, treat, and make recommendations in confidence based on data provided by the FTC. Table 4 provides examples of situations and their corresponding reporting requirements for easy reference.

As a precaution, the TAC sponsors should seek input from the FTC’s General Counsel to establish how a closed subcommittee might address strategic issues without compromising the openness of the process or the spirit of the legislation.

Table 4: Example Situations and Openness/Reporting Requirements

Example	Openness/Reporting Requirement?
Recommendations are made by the TAC.	YES
An open subcommittee is discussing challenges of an emerging technology in a meeting.	YES
The TAC is reviewing a report from a closed subcommittee with the underlying proprietary data removed.	YES
A subcommittee is providing feedback or expertise without recommendations.	NO
A closed subcommittee is reviewing proprietary data about a case.	NO

ETHICS

According to the US Office of Government Ethics (OGE), FTC Advisory Committee members are subject to [special ethics provisions](#) summarized in Table 5. To qualify for these provisions, committee members are expected to serve *less than 60 days per calendar year*. Per [FTC guidelines](#), FAC members would not be paid; however, the FTC should be aware of [pending legislation](#) to designate FAC members as Special Government Employees (SGEs), which would require the FTC to compensate TAC members.

Committee members would supplement personnel working in full-time FTC technologist roles and would not replace existing roles. Additionally, the FTC would not be able to appoint Committee members in anticipation of hiring them as full-time technologists. For more information, consult the guide to [Inappropriate Use of Experts and Consultants at Selected Civilian Agencies](#) from the US Government Accountability Office (GAO).

Table 5: Ethics Guidelines

Phase	Category	Rule
Joining the Committee	Financial Disclosure	TAC members must file a confidential financial disclosure report within 30 days of appointment. The report should cover the past 12 months of financial activity. The Committee cannot meet until all confidential financial disclosures are filed.
	Ethics Training	TAC members must receive an initial ethics training and briefing before their first meeting.
Serving on the Committee	Financial Conflicts of Interest	By default, TAC members can’t participate in any matters that could help their financial interests. However, the FTC can issue one of two types of waivers: 18 U.S.C. § 208(b)(2) if the financial interest is remote or inconsequential, or 208(b)(c) when the need for services outweighs the potential conflict of interest. TAC members may also choose to divest from disqualifying financial interests and can get a Certificate of Divestiture, which gives them better tax treatment for divesting.
	Limits for Representation	TAC members may serve as expert witnesses in cases related to the FTC as long as they spend less than 60 hours a year on the TAC.
	Misuse of Position	TAC members cannot leverage public office, nonpublic information, or government property for personal gain.
	Outside Payments, Income, Gifts	TAC members can continue to be paid by their employers and receive payment for outside engagements. They cannot accept bribes, fundraise from parties that could benefit from the TAC’s work, or accept gifts from prohibited sources. They also cannot give gifts to supervisors.
Leaving the Committee	Restrictions on Representation	After leaving the TAC, members are <i>not</i> subject to the 1-year ban on making contact with the agency as long as they served less than 60 days the year before leaving the committee.



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COST

Advisory Committee costs are divided into six categories:⁶

- ▶ Federal support staff salaries for government staff that coordinate meetings and provide general administrative and logistics support;
- ▶ Nonfederal member salaries for Committee members who are not federal employees. This can include industry, nonprofit, academia, state and local government, and others;
- ▶ Nonmember consultant salaries for nongovernment support staff;
- ▶ Travel and per diem costs; and
- ▶ Miscellaneous costs, e.g., website maintenance, reserving meeting venues, etc.

Members are not expected to receive compensation, and travel and per diem costs are expected to be minimal by utilizing virtual teleconference software. A majority of Committee costs will be incurred by federal support staff. Based on the previous FTC Committee from 2000, the first year is expected to require 1.25 FTE support, which should decrease in subsequent years as processes become more efficient. This translates to a Committee cost of \$150,000–\$200,000 per year.

MEASURING IMPACT

The Executive Director should commission an annual review of the TAC to assess its impact on the FTC operations and mission with the help of Bureau and Office Performance Measure Reporting Officials (PMRO). PMROs contribute to the annual Agency Financial Report and have the skills and tools to collect performance data on the TAC and subcommittees throughout the year. TAC impact could be assessed using the following tools:

- ▶ **Recommended Performance Goals and Metrics.** The Appendix contains a table of recommended goals and metrics specific to the TAC and subcommittees to be used as an initial method for tracking and quantifying TAC and subcommittee impact. These should be updated periodically to improve their ability to assess TAC and subcommittee performance.
- ▶ **Case studies.** Throughout the year, the FTC should identify and track instances that highlight positive and negative contributions by the TAC and subcommittees. These could include particularly impactful advice to policymakers; major contributions to an investigation, litigation, or a compliance action; or retrospectives on unsuccessful actions with recommendations for improvement.
- ▶ **FTC stakeholder surveys.** The Executive Director should commission a survey of FTC stakeholders who have interfaced with the TAC or subcommittees during that year to get performance and feedback information from FTC stakeholders. The survey should be distributed as widely as possible to capture the breadth of interactions.
- ▶ **TAC member interviews.** Select Committee and subcommittee members should be interviewed to assess the Committee's operation and impact. Members should be invited to provide feedback on TAC leadership, opportunities for improvement, internal conflicts, and other useful insights.

TAC performance and impact should be incorporated into [annual reports](#) where applicable and to the degree that it is helpful or required to inform agency leadership, the President, Congress, the public, and other stakeholders. An additional report should be produced by the Executive Director (or their designee) with more detailed performance and impact metrics as well as improvement recommendations.

Best Practices⁷

Do...	Don't...
<i>Support the TAC's work:</i> Success requires strong relationships between Committee members and their agency counterparts. Selection of qualified Designated Federal Officers (DFOs) and Committee Chairs will be crucial to the TAC's success.	<i>Impose process:</i> TAC sponsors should avoid imposing administrative burdens beyond what is required in FACA regulation. This includes unnecessary paperwork and long nomination processes, which could stifle the Committee's work.
<i>Provide direction:</i> The TAC sponsors should make the goals for the Committee and subcommittees clear to members, and communicate agency needs to the FTC Chair so the Committee remains focused on important issues.	<i>Ask for advice from subcommittees:</i> Subcommittees cannot give advice directly to the FTC or any federal employee. Instead, they are directed by the main TAC, and they report the results of any research to the TAC.
<i>Build diverse committees:</i> A key benefit of advisory committees is access to a wide variety of perspectives. The TAC needs to embrace diversity as a core value both in its membership makeup and in the kinds of projects it takes on.	<i>Tokenize diversity:</i> Leadership should embrace a culture in which the input of individual committee members is valued and the needs of communities served by the FTC are represented without undue burden on individual TAC members.
<i>Appoint members aligned with the FTC's mission:</i> Committee members should believe in the FTC's mission. Member selection should consider conflicts of interest and ideologies that may detract from the TAC's goals.	<i>Politicize the committee:</i> The Committee and subcommittees should be nonpartisan; however, membership does not require individuals to remain apolitical or to abstain from political activity.
<i>Give guidance on reporting:</i> TAC sponsors and the DFO should provide clear guidance on what can be discussed openly and what needs to be kept confidential under transparency requirements.	<i>Keep all meetings confidential:</i> TAC and subcommittee work should happen in the open as much as possible, in keeping with the spirit and the letter of the FACA legislation.
<i>Measure progress:</i> The FTC should measure the impact of the TAC and its subcommittees and keep track of how the TAC's work supports agency goals.	<i>Maintain unnecessary Committees:</i> The FTC should suspend the TAC or any of its subcommittees when services are not needed, and restart them as necessary.
<i>Augment the FTC's work:</i> The TAC is not a way for the FTC to get free technologists. The Committee should bring technologists from civil society into the FTC in an advisory capacity, thus lending context to the FTC's work and providing the agency with real-world insights into how technology is used.	<i>Replace full-time positions:</i> Committee members should serve in addition to, and not in place of, full-time FTC technologists. Per the ethics guidelines, Committee and subcommittee members should not serve more than 60 hours in a year.

Appendix

COMMITTEE JUMPSTART GUIDE

This guide breaks down the process of forming a federal advisory committee at the FTC into seven steps.

1. Designate a Committee Management Officer to manage the agency's advisory committees. Under the FTC's regulations on advisory committee management ([16 CFR § 16.4](#)), the Commission should designate the Executive Director as the agency's CMO. The CMO would be responsible for ensuring administrative functions are completed, including oversight of Committee activities; records maintenance; timely and complete reporting; and other administrative and reporting activities.

Statute Referenced: [16 CFR § 16.4](#)

2. Appoint a Designated Federal Officer for each established advisory committee. The DFO or an FTC staff member authorized by the DFO must attend each Advisory Committee meeting. The law further requires that no advisory committee can conduct any meeting without that officer or employee.

Statute Referenced: [41 CFR § 102-3.120](#), [16 CFR § 16.7](#)

3. Draft a Charter. Before a committee can meet or take any action, the FTC must prepare a formal committee charter. In addition to establishing the committee, the charter should specify the committee's mission, specific duties, and general operational characteristics. The FTC's regulations on advisory management require that a charter include specific information, such as the name, scope of advisory activities, estimated annual cost, number and frequency of meetings per year, and more. The sample FTC Technology Advisory Committee Charter demonstrates the full list of information and detail required in the charter. The charter should be completed by the committee's DFO or an FTC staff member authorized by the DFO.

Statute Referenced: [41 CFR § 102-3.70](#), [16 CFR § 16.6](#)

Resource: FTC TAC Charter

4. *Develop the Membership Balance Plan.* [Section 5\(b\)\(2\)](#) of the FACA and the corresponding [regulations](#) require committees to be composed of diverse members that will capture varying viewpoints. Agencies are required to provide a Membership Balance Plan that describes their plan to attain balanced membership for committees being established, renewed, or reestablished during the charter consultation process with the GSA.

The FACA Membership Balance Plan informs, and is consistent with, the FAC's charter. The agency should update the Plan whenever a federal advisory committee is renewed or reestablished, and also when the committee's charter is amended. The plan is a stand-alone document that describes how the agency intends to achieve balance in terms of the points of view represented and the functions to be performed by the federal advisory committee.

Statute Referenced: [41 CFR § 102-3.30\(c\)](#)

Resource: FTC TAC Membership Balance Plan

5. *Consult with the Government Services Administration.* Before establishing, renewing, or reestablishing an Advisory Committee and filing the charter, the Executive Director must consult with the Committee Management Secretariat (CMS) at the GSA. This consultation can be set up by emailing cms@gsa.gov.

As part of this consultation, the Executive Director will be encouraged to engage in constructive dialogue with the CMS. The CMS may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee; suggest alternate methods of attaining its purpose that the agency may wish to consider; or inform the agency of a preexisting advisory committee performing similar functions.

Statute Referenced: [41 CFR § 102-3.60](#)

6. *Notify the public.* Upon receiving approval from CMS, the FTC must publish a notice in the Federal Register announcing that the advisory committee is being established. The notice should describe the purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

This notice must appear at least 15 calendar days before the charter is filed. However, the CMS may approve the charter in less than 15 calendar days if the FTC requests it with good cause. Committee renewals can be published concurrently with the charter filing.

Statute Referenced: [41 CFR § 102-3.65](#)

7. *File charter.* To establish, renew, or reestablish the TAC, a charter must be filed with:

1. The FTC Executive Director;
2. The Committee on Commerce, Science, and Transportation of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives;
3. The Library of Congress; and
4. The Committee Management Secretariat.

Statute Referenced: [41 CFR § 102-3.](#)

SAMPLE COMMITTEE CHARTER

Federal Trade Commission

CHARTER

FEDERAL TRADE COMMISSION TECHNOLOGY ADVISORY COMMITTEE

1. Official title. The Federal Trade Commission Technology Advisory Committee (“Committee”).
2. Authority. The Committee is established under agency authority pursuant to and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App 2) (the “Act”).
3. Objective and scope. The Committee will advise and consult with the Federal Trade Commission (“FTC”) on:
 - (1) Issues relevant to the FTC’s mandate posted by existing and emergent technologies;
 - (2) Design of rapid and effective interventions in technology markets; and
 - (3) Remedy design and implementation in the areas of antitrust and consumer protection.

The Committee’s advice and recommendations may involve discussions on issues, processes, studies, and/or reports on a range of technologies, as well as other topics related to FTC’s duties and authorities.
4. Duties. The duties of the Committee are solely advisory and shall extend only to the submission of advice and recommendations to the FTC, which shall be nonbinding to the FTC. No determination of fact or policy will be made by the Committee.
5. Reports. The Committee reports to the Executive Director at the Office of the Executive Director.
6. Designated Federal Officers (“DFOs”). FTC employee(s) will be appointed to serve as the Designated Federal Officer(s). Each DFO, or a designee, will approve or call the Committee’s and subcommittees’ meetings, approve the meeting agendas, attend the Committee and subcommittee meetings, adjourn any meeting when the DFO determines adjournment to be in the public interest, and chair meetings when directed to do so by the Chair or a designee.
7. Support. The FTC will support the Committee, as consistent with the Act. In addition, the FTC will provide whatever additional support is required for the Committee’s activities to the extent permitted by law and subject to the availability of resources.

8. Membership. The Committee shall consist of no fewer than 15 and no more than 25 members, who must be recognized technology experts or representatives of sectors related to the FTC’s duties and authorities. The FTC shall ensure that the Committee reflects balanced membership and includes a cross-section of members representative of the views of state and nongovernment persons having an interest in the duties and authorities of the FTC.
9. Chair; Vice Chair; Secretary; Assistant Secretary. The FTC will appoint:
 - (1) A Chair;
 - (2) A Vice Chair;
 - (3) A Secretary; and
 - (4) An Assistant Secretary.

Each member appointed or elected shall serve a term of 2 years in the capacity for which the member was appointed or elected.
10. Meetings. The Committee will meet at the call of the relevant DFO not less frequently than twice annually and, from time to time, at the call of the Commission. The DFO will give each member of the Committee written notice of each meeting no later than two weeks before the date of the meeting. No meeting shall be held except at the call of, or with the advance approval of, the DFO and with an agenda approved by such official.
11. Subcommittees. The FTC has the authority to create subcommittees that must report back to the Committee. Any subcommittees and subgroups will report any research to the Committee for full deliberations and discussion. Subcommittees or subgroups will have no authority to make decisions on behalf of the Committee, nor may they report directly to the FTC or to any federal officer or employee.

The Committee may bring in experts to serve only on a subcommittee and not the Committee as a whole.
12. Cost. The estimated annual operating cost of the Committee is approximately \$200,000, including 1.25 staff years of support. Annual operating costs include meeting expenses, travel, staff salary and benefits, and other expenses. Members shall not be paid for their time or service. As for persons intermittently in the government service, members shall be reimbursed for their travel-related expenses to attend meetings in accordance with 5 U.S.C. § 5703.
13. Duration. The need for this Advisory Committee is continual; however, this charter is subject to renewal every 2 years.
14. Suspension. The Advisory Committee Management Officer (FTC Executive

Director) and Agency Head (FTC Chair) may choose to suspend the operations of the Committee as well as any of its subcommittees if its services are no longer useful, and resume the Committee or subcommittee at a later date.

15. Termination. The authority to utilize this committee expires 2 years from the date this Charter is filed unless the charter is renewed prior to termination.
16. Recordkeeping. The records of the Committee and any subcommittees will be handled in accordance with the General Records Schedule. The records will be available for public inspection and copying, subject to the Freedom of Information Act, 5 U.S.C. 552.
17. Filing date. The filing date of this Charter is [DATE].

References:

- ▶ [Preparing Federal Advisory Committee Charters – General Services Administration](#)
- ▶ [Sample Discretionary Committee Charter – Department of Treasury*](#)
- ▶ [Investment Advisory Committee Charter \(2012\) – Securities and Exchange Commission*](#)
- ▶ [Investment Advisory Committee Charter \(2009\) – Securities and Exchange Commission](#)

* Text from these examples was used as boilerplate when creating the sample Committee Charter.

SAMPLE MEMBERSHIP BALANCE PLAN

Federal Trade Commission

MEMBERSHIP BALANCE PLAN

FEDERAL TRADE COMMISSION TECHNOLOGY ADVISORY COMMITTEE

1. Name. The Federal Trade Commission Technology Advisory Committee (“Committee”).
2. Authority. The Committee is established under agency authority pursuant to and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App 2) (the “Act”).
3. Mission/function. The mission of the Committee is to advise, consult with, report, and make recommendations to the Federal Trade Commission (“FTC”) on:
 - (1) Issues relevant to the FTC’s mandate posed by existing and emergent technologies;
 - (2) Design of rapid and effective interventions in technology markets; and
 - (3) Remedy design and implementation in the areas of antitrust and consumer protection.
4. Points of view. The Committee consists of members who are appointed by the FTC Chair.

The Committee will consist of no less than 15 and no more than 25 members who are professionally, technically, and culturally diverse. There will be a regular rotation of members. Primary considerations are:

 - (1) Members should have recognized pertinent knowledge, expertise, and demonstrated ability.
 - (2) Within reasonable limits, members’ fields of specialty should be complementary within the group.

Committee members will be designated as Special Government Employees (“SGEs”). The members will provide committees with their own best independent judgment based on their individual experience.
5. Other balance factors. Other factors considered are:
 - (1) Qualified individuals reflecting public and private organizations, including academic, government, and private sector institutions;
 - (2) Qualified individuals reflecting small, medium, and large organizations;

- (3) Qualified individuals reflecting a variety of technical areas of expertise;
- (4) Qualified individuals reflecting underrepresented groups, such as ethnic minorities, women, and individuals with disabilities;
- (5) Qualified individuals reflecting a range of ages; and
- (6) Qualified individuals reflecting different geographical areas.

6. Candidate identification process. The FTC will solicit suggestions for potential members from a wide range of sources, including but not limited to: universities, federal agencies, state and government organizations, university-based organizations, nonprofit and civil society organizations, and private sector companies.

Suggestions will be reviewed and potential candidates will be identified while taking into consideration professional and personal qualifications, experience, fields of expertise, and other balance factors. A short list of the most qualified candidates will be developed and discussed. The FTC Chair and Designated Federal Officers (“DFOs”) will identify the top candidates to contact for interest and availability. The Advisory Committee Management Officer (ACMO) and Agency Head (FTC Chair) will issue the final approval of Committee members.

Committee members will serve a 2-year term and may be reappointed. When a vacancy occurs and it is determined that a replacement is necessary, the list of suggestions will become a source for potential replacements.

- 7. Subcommittee balance. The process used to determine advisory committee member balance for the Committee will be used for subcommittees.
- 8. Other. There are currently no other known factors affecting the balance of the Committee.
- 9. Date reviewed. This Membership Balance Plan was reviewed on [DATE].

References:

- ▶ [Federal Advisory Committee Membership Balance Plan – General Services Administration](#)
- ▶ [Advisory Committee for Education and Human Resources Membership Balance Plan – National Science Foundation*](#)
- ▶ [Cybersecurity Advisory Committee Membership Balance Plan – Cybersecurity Infrastructure Security Agency*](#)

* Text from these examples was used as boilerplate when creating the sample Membership Balance Plan.

LEGAL MECHANISMS

Regulation	Highlights
Federal Advisory Committee Act of 1972, as amended	<ul style="list-style-type: none"> ▶ Recognizes the merits of seeking advice from the public; ▶ Governs the establishment, operation, and termination of committees within the executive branch of the federal government; ▶ Defines what constitutes a federal advisory committee; and ▶ Ensures that Congress is kept informed about the number, purpose, membership, activities, and cost of advisory committees.
General Services Administration Regulations 41 CFR Parts 102-3 Federal Advisory Committee Management	<ul style="list-style-type: none"> ▶ Provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of the Act; and ▶ Defines the policies, establishes minimum requirements, and provides guidance to federal officers and agencies for the establishment, operation, administration, and duration of advisory committees.
FTC Advisory Committee Management	<ul style="list-style-type: none"> ▶ Sets policy for FTC advisory committees; and ▶ Provides procedures for establishment, operation, and public access considerations of advisory committees under the jurisdiction of the FTC.
Sunshine in the Government Act	<p>Advisory committee meetings may be closed or partially closed to the public based upon provisions of the Government in the Sunshine Act of 1976 (Public Law 94-409). Examples of meetings that may be closed under the FACA are:</p> <ul style="list-style-type: none"> ▶ Those including discussions of classified information; ▶ Reviews of proprietary data submitted in support of federal grant applications; and ▶ Deliberations involving considerations of personnel privacy.
OMB Circular No. A-135: Management of Federal Advisory Committees	<p>This circular provides guidance and instruction on the management of federal advisory committees and requires executive departments and agencies to establish a committee planning and review process.</p>

PERFORMANCE GOALS AND METRICS

Level	Key Performance Indicator (KPI)	Description
TAC	Total Number of Recommendations*	Total number of formal recommendations offered by the TAC.
TAC	Implemented Recommendations*	Number of TAC recommendations fully implemented.
TAC	Partially Implemented Recommendations*	Number of TAC recommendations partially implemented.
TAC	Rejected Recommendations*	Number of TAC recommendations rejected or not implemented.
TAC	Percent of Recommendations Fully Implemented*	Percentage of TAC recommendations fully implemented.
TAC	Percent of Recommendations Partially Implemented*	Percentage of TAC recommendations partially implemented.
TAC	Percent of Recommendations Rejected/Not Implemented	Percentage of TAC recommendations rejected or not implemented.
Subcommittee	Preliminary Investigations Impacted	The number of preliminary investigations by subcommittee contributions impacted and the magnitude of the contributions.
Subcommittee	Investigations Impacted	The number of formal investigations impacted by subcommittee contributions and the magnitude of the contributions.
Subcommittee	Litigation Impacted	The number of litigation activities impacted by subcommittee contributions and the magnitude of the contribution. This includes both successful and unsuccessful outcomes. In both instances, the magnitude of the contribution should be assessed independently of the outcome when possible. For example, if litigation was unsuccessful due to other factors but the subcommittee contributions were strong, the impact magnitude should be Medium or High. Conversely, if the litigation was successful but the impact of the subcommittee contribution was more modest, the magnitude should be Low or Medium.

Level	Key Performance Indicator (KPI)	Description
Subcommittee	Compliance Impacted	The number of compliance activities impacted by subcommittee contributions and the magnitude of the contribution. This includes activities where subcommittee contributions impacted divestitures, consent decrees, monitoring plan development, compliance monitoring, and all other post-litigation activities.
Subcommittee	Miscellaneous Activities Impacted	The number of activities impacted by subcommittee contributions that do not fall into the other categories. This includes developing education materials for public dissemination, recruitment, policy development, and other activities.
Subcommittee	Activities Impacted	The total number of activities impacted by contributions from a subcommittee. This should be the sum of Preliminary Investigations Impacted, Investigations Impacted, Litigation Impacted, Compliance Impacted, and any other uncategorized contributions from the Subcommittee.
Subcommittee	Office Activities Impacted	The number of activities impacted by contributions from a subcommittee according to the Office. This is the Office where the Primary Activity Lead resides (e.g., the lead investigator, lawyer, etc.).
Subcommittee	Mean Impact Score – Cumulative	The unweighted Mean Impact Score of the activities impacted by contributions from all the subcommittees.
Subcommittee	Mean Impact Score – Subcommittee	The unweighted Mean Impact Score of the activities impact by contribution from each subcommittee.
Subcommittee	Median Impact Score – Cumulative	The Median Impact Score of the activities impacted by contributions from all the subcommittees.
Subcommittee	Median Impact Score – Subcommittee	The Median Impact Score of the activities impact by contribution from each subcommittee.
Subcommittee	Estimated Cumulative Money Return to Consumers from Low/Medium/High Impact Activities	The cumulative amount of money that was returned to consumers that included a low, medium, and high impact contribution from the subcommittee (note: one KPI for each impact level).

Asterisk (*) indicates required reporting to the Office of Personnel Management.

Endnotes

- 1 Based in part on 2022 recommendations developed for Department of Defense advisory boards. See Courtney Weinbaum, Diana Meyers, and William Shelton, "Reimagining Defense Advisory Boards: Lessons Learned for Leaders in the U.S. Department of Defense," *RAND Corporation* (2022), https://www.rand.org/pubs/research_reports/RR1301-1.html.
- 2 Note that this differs from the chair selection process in some other FACs, for which the chair is elected by committee members.
- 3 See Weinbaum, Myers, and Shelton, *supra* note 1, at 8.
- 4 This contributes to the FTC's goal of "[h]aving a workforce that looks like and draws from the public it protects." See Federal Trade Commission, *FY 2022-2026 FTC Strategic Plan* (2021), <https://www.regulations.gov/document/FTC-2021-0061-0001>.
- 5 These examples are drawn from the [Final Report of the Stigler Committee on Digital Platforms](#) (Stigler Report) and the [Report of the Digital Competition Expert Panel](#) (Furman Report).
- 6 U.S. Library of Congress, Congressional Research Service, *The Federal Advisory Committee Act: Analysis of Operations and Costs*, R44248 (2016), 19.
- 7 Based in part on 2022 recommendations developed for Department of Defense advisory boards. See Weinbaum, Myers, and Shelton, *supra* note 1.

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