



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

July 5, 2019

M-19-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Russell T. Vought
Acting Director

SUBJECT: Instructions Regarding the Implementation of Executive Order 13875

Overview

This memorandum provides guidance regarding the implementation of Executive Order 13875, titled “Evaluating and Improving the Utility of Federal Advisory Committees.”¹ Section 4 of the order, among other things, requires the Director of the Office of Management and Budget (Director), in coordination with the Administrator of General Services, to issue instructions regarding the implementation of the order, including how to calculate the number of eligible committees to eliminate in each agency and how to comply with applicable law.

Review of Current Advisory Committees

Section 1(a) requires each executive department and agency (agency) to evaluate the need for each of its current “eligible committees,” which the order defines as current advisory committees established under section 9(a)(2) of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), and those advisory committees established under section 9(a)(1) of FACA that are authorized by law but not required by statute.²

Agencies are strongly encouraged to terminate all eligible committees that the agency identifies as unnecessary or otherwise meriting termination, including committees for which the:

- (i) stated objectives of the committee have been accomplished;
- (ii) subject matter or work of the committee has become obsolete;
- (iii) primary functions have been assumed by another entity; or
- (iv) agency determines that the cost of operation is excessive in relation to the benefits to the Federal Government.

¹ This memorandum should be implemented consistent with applicable law, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

² In the event that an agency shares a current eligible committee with another agency, each agency that established the committee should count the committee toward the number of current eligible committees that the agency must review under Section 1(a).

Calculating the Minimum Number of Eligible Committees Required for Elimination

Section 1(b) requires each agency with three or more eligible committees to terminate, at minimum, one-third of its current advisory committees established under section 9(a)(2) of FACA by September 30, 2019.³ Section 1(e) provides that agencies may count eligible committees terminated since January 20, 2017, toward the requirement of Section 1(b).⁴

To calculate the minimum number of eligible committees required for elimination under Section 1(b), an agency should first divide the total number of current advisory committees established under section 9(a)(2) of FACA by three and then round down this resulting value to the nearest whole number. The agency may then subtract from this value the total number of eligible committees terminated since January 20, 2017, if any, and the resulting value constitutes the minimum number of committees that each agency must terminate to comply with Section 1(b). Represented as an equation, the calculation that an agency can undertake to determine the minimum number of committees that it must terminate to comply with the order is: (current advisory committees established under section 9(a)(2) of FACA \div 3) – the total number of eligible committees terminated since January 20, 2017.

Example 1:

Agency X has five current advisory committees established under section 9(a)(2) of FACA and has not terminated any eligible committees since January 20, 2017.

To comply with the minimum requirements of the order, Agency X must terminate one current advisory committee established under section 9(a)(2) of FACA. (Step 1: $5 \div 3 = 5/3$, which the agency may round down to 1. Step 2: $1 - 0 = 1$.)

Example 2:

Agency X has five current advisory committees established under section 9(a)(2) of FACA and has terminated one eligible committee since January 20, 2017.

Agency X has already met the minimum requirements of the order and, therefore, does not need to terminate any additional eligible committees to be in compliance. (Step 1: $5 \div 3 = 5/3$, which the agency may round down to 1. Step 2: $1 - 1 = 0$.)

Waivers

Pursuant to Section 1(c), each agency may request a waiver from the requirement of Section 1(b) from the Director. If an agency has good cause for requesting such a waiver, the agency should make this request in writing, as soon as practicable, to the Office of Management

³ Section 1(d) exempts from the requirement of Section 1(b) each agency that has fewer than three eligible committees. Section 5 exempts from the requirements of Section 1(b) all merit review panels and advisory committees whose primary purpose is to provide scientific expertise to support agencies making decisions related to the safety or efficacy of products to be marketed to American consumers. In the event that an agency shares a current advisory committee established under section 9(a)(2) of FACA with another agency, each agency that established the committee should count the committee toward the requirement of Section 1(b).

⁴ In the event that multiple agencies shared an eligible committee that subsequently was terminated after January 20, 2017, each agency that established the committee may, pursuant to Section 1(e), count the committee toward the requirement of Section 1(b).

and Budget (OMB) point-of-contact below, and provide the agency's justification for why the Director should grant the agency's waiver request. The Director may grant such a waiver if the Director concludes that it is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest.

Reporting Requirements

Section 3(a) requires each agency to submit to the Director, by not later than August 1, 2019: (i) a recommendation for each of the agency's current advisory committees established by the President under section 9(a)(1) of FACA regarding whether the committee should be continued; and (ii) a detailed plan, for each advisory committee required by statute, for continuing or terminating such committee, including, as appropriate, recommended legislation for submission to the Congress.⁵ Agencies should submit these required recommendations and plans to the Director in writing through the OMB point-of-contact below.

If you have any questions regarding this memorandum, please contact Joe Gammello (joseph.a.gammello@omb.eop.gov) in OMB's Office of General Counsel.

⁵ The Administrator of the General Services must submit to the Director in writing, by not later than August 1, 2019, all justifications and recommendations required by Section 3(a) for independent Presidential advisory committees, as defined by 41 CFR 102-3.25. In the event that an agency shares a current advisory committee described under Section 3(a) with another agency, each agency that established the committee should count the committee toward the reporting requirement of Section 3(a).