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Policy Statement

(a) All cease and desist orders issued by the FTC that require compliance with provisions of the Truth-in-Lending Act and Regulation Z (12 CFR part 226) will be interpreted and enforced consistent with the amendments to the TILA incorporated by the Truth-in-Lending Simplification and Reform Act of 1980, and the revision of Regulation Z implementing the same, promulgated on April 1, 1981 by the Board of Governors of the Federal Reserve System (46 FR 20848), and by subsequent amendments to the TILA and Regulation Z. Likewise, the Federal Reserve Board staff commentary to revised Regulation Z (46 FR 50288, October 9, 1981), and subsequent revisions to the Federal Reserve Board staff commentary to Regulation Z, will be considered in interpreting the requirements of existing orders.

(b) After an amendment to Regulation Z becomes effective, compliance with the revised credit disclosure requirements will be considered compliance with the existing order, and:

(1) To the extent that revised Regulation Z deletes disclosure requirements imposed by any Commission order, compliance with these requirements will no longer be required; however,

(2) To the extent that revised Regulation Z imposes additional disclosure or format requirements, a failure to comply with the added requirements will be considered a violation of the TILA.

(c) A creditor or advertiser must continue to comply with all provisions of the order which do not relate to Truth-in-Lending Act requirements or are unaffected by Regulation Z. These provisions are not affected by this policy statement and will remain in full force and effect.

Staff Clarifications

The Commission intends that this Enforcement Policy Statement obviate the need for any creditor or advertiser to file a petition to reopen and modify any affected order under section 2.51 of the Commission's rules of practice (16 CFR 2.51). However, the Commission recognizes that the policy statement may not provide clear guidance to every creditor or advertiser under order. The staff of the Division of Enforcement, Bureau of Consumer Protection, will respond to written requests for clarification of any order affected by this policy statement.

[60 FR 42033, Aug. 15, 1995]

PART 16—ADVISORY COMMITTEE MANAGEMENT

Sec.
16.1 Purpose and scope.
16.2 Definitions.
16.3 Policy.
16.4 Advisory Committee Management Officer.
16.5 Establishment of advisory committees.
16.6 Charter.
16.7 Meetings.
16.8 Closed meetings.
16.9 Notice of meetings.
16.10 Minutes and transcripts of meetings.
16.11 Annual comprehensive review.
16.12 Termination of advisory committees.
16.13 Renewal of advisory committees.
16.14 Amendments.
16.15 Reports of advisory committees.
16.16 Compensation.

AUTHORITY: Federal Advisory Committee Act, 5 U.S.C. App. I Section 8(a).

SOURCE: 51 FR 30055, Aug. 22, 1986, unless otherwise noted.

§ 16.1 Purpose and scope.

(a) The regulations in this part implement the Federal Advisory Committee Act, 5 U.S.C. App. I.

(b) These regulations shall apply to any advisory committee, as defined in paragraph (b) of § 16.2 of this part. However, to the extent that an advisory committee is subject to particular statutory provisions that are inconsistent with the Federal Advisory Committee Act, these regulations do not apply.

§ 16.2 Definitions.

For purposes of this part:

(a) *Administrator* means the Administrator of the General Services Administration.

(b) *Advisory committee*, subject to exclusions described in paragraph (b)(2) of this section, means any committee, board, commission, council, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established or utilized by

the Commission for the purpose of obtaining advice or recommendations for the Commission or other agency or officer of the Federal Government on matters that are within the scope of the Commission's jurisdiction.

(1) Where a group provides some advice to the Commission but the group's advisory function is incidental and inseparable from other (e.g., operational or management) functions, the provisions of this part do not apply. However, if the advisory function is separable, the group is subject to this part to the extent that the group operates as an advisory committee.

(2) Groups excluded from the effect of the provisions of this part include:

(i) Any committee composed wholly of full-time officers or employees of the Federal Government;

(ii) Any committee, subcommittee or subgroup that is exclusively operational in nature (e.g., has functions that include making or implementing decisions, as opposed to the offering of advice or recommendations);

(iii) Any inter-agency advisory committee unless specifically made applicable by the establishing authority.

(c) *Commission* means the Federal Trade Commission.

(d) *GSA* means the General Services Administration.

(e) *Secretariat* means the Committee Management Secretariat of the General Services Administration.

(f) *Sunshine Act* means the Government in the Sunshine Act, 5 U.S.C. 552b.

§ 16.3 Policy.

(a) The Commission's policy shall be to:

(1) Establish an advisory committee only when it is essential to the conduct of agency business;

(2) Insure that adequate information is provided to the Congress and the public regarding advisory committees, and that there are adequate opportunities for access by the public to advisory committee meetings;

(3) Insure that the membership of the advisory committee is balanced in terms of the points of view represented and the functions to be performed; and

(4) Terminate an advisory committee whenever the stated objectives of the committee have been accomplished; the subject matter or work of the advisory committee has become obsolete; the cost of operating the advisory committee is excessive in relation to the benefits accruing to the Commission; or the advisory committee is otherwise no longer a necessary or appropriate means to carry out the purposes for which it was established.

(b) No advisory committee may be used for functions that are not solely advisory unless specifically authorized to do so by law. The Commission shall be solely responsible for making policy decisions and determining action to be taken with respect to any matter considered by an advisory committee.

§ 16.4 Advisory Committee Management Officer.

(a) The Commission shall designate the Executive Director as the Advisory Committee Management Officer who shall:

(1) Exercise control and supervision over the establishment, procedures, and accomplishments of the advisory committees established by the Commission;

(2) Assemble and maintain the reports, records, and other papers of any advisory committee during its existence;

(3) Carry out, on behalf of the Commission, the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to such reports, records, and other papers;

(4) Maintain in a single location a complete set for the charters and membership lists of each of the Commission's advisory committees;

(5) Maintain information on the nature, functions, and operations of each of the Commission's advisory committees; and

(6) Provide information on how to obtain copies of minutes of meetings and reports of each of the Commission's advisory committees.

(b) The name of the Advisory Committee Management Officer designated in accordance with this part, and his or her agency address and telephone number, shall be provided to the Secretariat.

§ 16.5 Establishment of advisory committees.

(a) No advisory committee shall be established under this part unless such establishment is:

(1) Specifically authorized by statute; or

(2) Determined as a matter of formal record by the Commission, after consultation with the Administrator, to be in the public interest in connection with the performance of duties imposed on the Commission by law.

(b) In establishing an advisory committee, the Commission shall:

(1) Prepare a proposed charter for the advisory committee in accordance with § 16.6 of this part; and

(2) Submit an original and one copy of a letter to the Administrator requesting concurrence in the Commission's proposal to establish an advisory committee. The letter from the Commission shall describe the nature and purpose of the proposed advisory committee, including an explanation of why establishment of the advisory committee is essential to the conduct of agency business and in the public interest and why the functions of the proposed committee could not be performed by the Commission, by an existing committee, or through other means. The letter shall also describe the Commission's plan to attain balanced membership on the proposed advisory committee in terms of points of view to be represented and functions to be performed. The letter shall be accompanied by two copies of the proposed charter.

(c) Upon the receipt of notification from the Administrator of his or her concurrence or nonconcurrence, the Commission shall notify the Administrator in writing that either:

(1) The advisory committee is being established. The filing of an advisory committee charter as specified in § 16.6 of this part shall be deemed appropriate written notification in this instance; or

(2) The advisory committee is not being established.

(d) If the Commission determines that an advisory committee should be established in accordance with paragraph (c) of this section, the Commission shall publish notice to that effect in the FEDERAL REGISTER at least fifteen days prior to the filing of the advisory committee's charter unless the Administrator authorizes publication of such notice within a shorter period of time. The notice shall identify the name and purpose of the advisory committee, state that the committee is necessary and in the public interest, and identify the name and address of the Commission official to whom the public may submit comments.

(e) The Commission may issue regulations or guidelines as may be necessary to operate and oversee a particular advisory committee.

§ 16.6 Charter.

(a) No advisory committee established, utilized, reestablished or renewed by the Commission under this part shall meet or take any action until its charter has been filed by the Commission with the standing committees of the Senate and House of Representatives having legislative jurisdiction over the Commission.

(b) The charter required by paragraph (a) of this section shall include the following information:

(1) The committee's official designation;

(2) The committee's objectives and the scope of its activity;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The Commission component or official to whom the committee reports;

(5) The agency or official responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(7) The estimated annual operating cost in dollars and man-years for the committee;

(8) The estimated number and frequency of committee meetings;

(9) The committee's termination date, if less than two years from the date of committee's establishment; and

(10) The date the charter is filed.

(c) A copy of the charter required by paragraph (a) of this section shall also be furnished at the time of filing to the

Secretariat and the Library of Congress.

(d) The requirements of this section shall also apply to committees utilized as advisory committees, even though not expressly established for that purpose.

§ 16.7 Meetings.

(a) The Commission shall designate an officer or employee of the Federal Government as the Designated Federal Officer for the advisory committee. The Designated Federal Officer shall attend the meetings of the advisory committee, and shall adjourn committee meetings whenever he or she determines that adjournment is in the public interest. The Commission, in its discretion, may authorize the Designated Federal Officer to chair meetings of the advisory committee.

(b) No meeting of any advisory committee shall be held except at the call of, or with the advance approval of, the Designated Federal Officer and with an agenda approved by such official.

(c) The agenda required by paragraph (b) of this section shall identify, in general terms, matters to be considered at the meeting and shall indicate whether any part of the meeting will concern matters that the General Counsel has determined to be covered by one or more of the exemptions of the Sunshine Act.

(d) Timely notice of each meeting of the advisory committee shall be provided in accordance with § 16.9 of this part.

(e) Subject to the provisions of § 16.8 of this part, each meeting of an advisory committee as defined in § 16.2(b) of this part shall be open to the public. Subcommittees and subgroups that are not utilized by the Commission for the purpose of obtaining advice or recommendations do not constitute advisory committees within the meaning of § 16.2(b) and are not subject to the meeting and other requirements of this part.

(f) Meetings that are completely or partly open to the public shall be held at reasonable times and at places that are reasonably accessible to members of the public. The size of the meeting room shall be sufficient to accommodate members of the public who can reasonably be expected to attend.

(g) Any member of the public shall be permitted to file a written statement with the committee concerning any matter to be considered in a meeting. Interested persons may be permitted by the committee chairman to speak at such meetings in accordance with procedures established by the committee and subject to the time constraints under which the meeting is to be conducted.

(h) No meeting of any advisory committee shall be held in the absence of a quorum. Unless otherwise established by statute or in the charter of the committee, a quorum shall consist of a majority of the committee's authorized membership.

§ 16.8 Closed meetings.

(a) Paragraphs (e), (f), and (g) of § 16.7 of this part, which require that meetings shall be open to the public and that the public shall be afforded an opportunity to participate in such meetings, shall not apply to any advisory committee meeting (or any portion thereof) which the Commission determines is concerned with any matter covered by one or more of the exemptions set forth in paragraph (c) of the Sunshine Act, 5 U.S.C. section 552b(c).

(b) An advisory committee that seeks to have all or part of its meeting closed shall notify the Commission at least thirty days before the scheduled date of the meeting. The notification shall be in writing and shall identify the specific provisions of the Sunshine Act which justify closure. The Commission may waive the thirty-day requirement when a lesser period of time is requested and justified by the advisory committee.

(c) The General Counsel shall review all requests to close meetings and shall advise the Commission on the disposition of each such request.

(d) If the Commission determines that the request is consistent with the policies of the Sunshine Act and the Federal Advisory Committee Act, it shall issue a determination that all or part of the meeting may be closed. A copy of the Commission's determination shall be made available to the public upon request.

(e) The advisory committee shall issue, on an annual basis, a report that sets forth a summary of its activities in meetings closed pursuant to this section, addressing those related matters as would be informative to the public and consistent with the policy of the Sunshine Act and of this part. Notice of the availability of such annual reports shall be published in accordance with § 16.15 of this part.

§ 16.9 Notice of meetings.

(a) Notice of each advisory committee meeting, whether open or closed to the public, shall be published in the FEDERAL REGISTER at least 15 days before the meeting date. Such notice shall include the exact name of the advisory committee as chartered; the time, date, place and purpose of the meeting; and a summary of the meeting agenda. Notice shall also state that the meeting is open to the public or closed in whole or in part, and, if closed, cite the specific exemptions of the Sunshine Act as the basis for closure. The Commission may permit the advisory committee to provide notice of less than fifteen days in extraordinary situations, provided that the reasons for doing so are included in the meeting notice.

(b) In addition to the notice required by paragraph (a) of this section, other forms of notice such as press releases and notices in professional journals may be used to inform interested members of the public of advisory committee meetings.

§ 16.10 Minutes and transcripts of meetings.

(a) Detailed minutes of each advisory committee meeting shall be kept. The minutes shall reflect the time, date and place of the meeting; and accurate summary of each matter that was discussed and each conclusion reached; and a copy of each report or other document received, issued, or approved by the advisory committee. In addition, the minutes shall include a list of advisory committee members and staff and full-time Federal employees who attended the meeting; a list of members of the public who presented oral or written statements; and an estimated number of members of the public who were present at the meeting. The minutes shall describe the extent to which the meeting was open to the public and the nature and extent of any public participation. If it is impracticable to attach to the minutes of the meeting any document received, issued, or approved by the advisory committee, then the minutes shall describe the document in sufficient detail to enable any person who may request the document to identify it readily.

(b) The accuracy of all minutes shall be certified to by the chairperson of the advisory committee.

(c) Minutes need not be kept if a verbatim transcript is made.

§ 16.11 Annual comprehensive review.

(a) The Commission shall conduct an annual comprehensive review of the activities and responsibilities of each advisory committee to determine:

(1) Whether such committee is carrying out its purpose;

(2) Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) Whether it should be merged with any other advisory committee or committees; or

(4) Whether it should be abolished.

(b) Pertinent factors to be considered in the comprehensive review required by paragraph (a) of this section include the following:

(1) The number of times the committee has met in the past year;

(2) The number of reports or recommendations submitted by the committee;

(3) An evaluation of the substance of the committee's reports or recommendations with respect to the Commission's programs or operations;

(4) An evaluation (with emphasis on the preceding twelve month period of the committee's work) of the history of the Commission's utilization of the committee's recommendations in policy formulation, program planning, decision making, more effective achievement of program objectives, and more economical accomplishment of programs in general.

(5) Whether information or recommendations could be obtained from sources within the Commission or from

another advisory committee already in existence;

(6) The degree of duplication of effort by the committee as compared with that of other parts of the Commission or other advisory committees; and

(7) The estimated annual cost of the committee.

(c) The annual review required by this section shall be conducted on a fiscal year basis, and results of the review shall be included in the annual report to the GSA required by § 16.15 of this part. The report shall contain a justification of each advisory committee which the Commission determines should be continued, making reference, as appropriate, to the factors specified in paragraph (b) of this section.

§ 16.12 Termination of advisory committees.

Any advisory committee shall automatically terminate not later than two years after it is established, reestablished, or renewed, unless:

(a) Its duration is otherwise provided by law;

(b) It is renewed in accordance with § 16.13 of this part; or

(c) The Commission terminates it before that time.

§ 16.13 Renewal of advisory committees.

(a) Any advisory committee established under this part may be renewed by appropriate action of the Commission and the filing of a new charter. An advisory committee may be continued by such action for successive two-year periods.

(b) Before it renews an advisory committee in accordance with paragraph (a) of this section, the Commission will inform the Administrator by letter, not more than sixty days nor less than thirty days before the committee expires, of the following:

(1) Its determination that a renewal is necessary and in the public interest;

(2) The reasons for its determination;

(3) The Commission's plan to maintain balanced membership on the committee;

(4) An explanation of why the committee's functions cannot be performed by the Commission or by an existing advisory committee.

(c) Upon receipt of the Administrator's notification of concurrence or nonconcurrence, the Commission shall publish a notice of the renewal in the FEDERAL REGISTER, which shall certify that the renewal of the advisory committee is in the public interest and shall include all the matters set forth in paragraph (b) of this section. The Commission shall cause a new charter to be prepared and filed in accordance with the provisions of §§ 16.5 and 16.6 of this part.

(d) No advisory committee that is required under this section to file a new charter for the purpose of renewal shall take any action, other than preparation and filing of such charter, between the date the new charter is required and the date on which such charter is actually filed.

§ 16.14 Amendments.

(a) The charter of an advisory committee may be amended when the Commission determines that the existing charter no longer accurately describes the committee itself or its goals or procedures. Changes may be minor, such as revising the name of the advisory committee, or may be major, to the extent that they deal with the basic objectives or composition of the committee.

(1) To make a minor amendment to an advisory committee charter, the Commission shall:

(i) Amend the charter language as necessary; and

(ii) File the amended charter in accordance with the provisions of § 16.6 of this part.

(2) To make a major amendment to an advisory committee charter, the Commission shall:

(i) Amend the charter language as necessary;

(ii) Submit the proposed amended charter with a letter to the Administrator requesting concurrence in the amended language and an explanation of why the changes are essential and in the public interest; and

(iii) File the amended charter in accordance with the provisions of § 16.6 of this part.

(b) Amendment of an existing charter does not constitute renewal of the advisory committee under § 16.13 of this part.

§ 16.15 Reports of advisory committees.

(a) The Commission shall furnish, on a fiscal year basis, a report of the activities of each of its advisory committees to the GSA.

(b) Results of the annual comprehensive review of the advisory committee made under § 16.11 shall be included in the annual report.

(c) The Commission shall notify the GSA, by letter, of the termination of, changes in the membership of, or other significant developments with respect to, an advisory committee.

§ 16.16 Compensation.

(a) *Committee members.* Unless otherwise provided by law, the Commission shall not compensate advisory committee members for their service on an advisory committee. In the exceptional case where the Commission is unable to meet the need for technical expertise or the requirement for balanced membership solely through the appointment of noncompensated members, the Commission may contract for or authorize the advisory committee to contract for the services of a specific consultant who may be appointed as a member of the advisory committee. In such a case, the Commission shall follow the procedures set forth in paragraph (b) of this section.

(b) *Consultants.* Prior to hiring or authorizing the advisory committee to hire a consultant to an advisory committee, the Commission shall determine that the expertise or viewpoint to be offered by the consultant is not otherwise available without cost to the Commission. The compensation to be paid to such consultant may not exceed the maximum rate of pay authorized by 5 U.S.C. section 3109. Hiring of consultants shall be in accordance with OMB Circular A–120 and applicable statutes, regulations, and Executive Orders.

(c) *Staff members.* The Commission may fix the pay of each advisory committee staff member at a rate of the General Schedule, General Management Schedule, or Senior Executive Service in which the Staff member's position would appropriately be placed (5 U.S.C. chapter 51). The Commission may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS–15, unless the Commission has determined that under the General Schedule, General Management Schedule, or Senior Executive Service classification system, the staff member's position would appropriately be placed at a grade higher than GS–15. The Commission shall review this determination annually.