

Title: FAIR Act Challenges and Appeals

Policy #: IBB/AS-13-01

Effective Date: 08/20/2013

Originating Office: IBB Administrative and Secretariat Operations, x4595

(a) PURPOSE: This policy describes procedures for the Broadcasting Board of Governors for reviewing and deciding challenges and appeals under the Federal Activities Inventory Reform (FAIR) Act of 1998.

(b) AUTHORITY & SCOPE:

(1) Authority:

(i) [The Federal Activities Inventory Reform \(FAIR\) Act of 1998](#), Pub. L. 105-270, as codified at 31 U.S.C. § 501 Note; and

(ii) [Office of Management and Budget \(OMB\) Circular A-76](#), revised 05/29/2003.

(2) Scope: This policy applies to challenges and appeals to the FAIR Act inventory for the Broadcasting Board of Governors which oversees two federal broadcast entities - the Voice of America and the Office of Cuba Broadcasting - through an umbrella organization called the International Broadcasting Bureau (IBB), hereinafter collectively referred to as “the Agency”.

(c) POLICY: Under Section 3 of the FAIR Act, the Agency’s decision to include or exclude a particular activity from its inventory of activities that are not Inherently Governmental Functions, or the Agency’s application of the OMB’s commercial activity reason codes, is subject to challenge and, then, possible appeal by an “Interested Party” as defined in paragraph (e)(2) below.

(d) PROCEDURES AND PRIMARY RESPONSIBILITIES:

(1) Filing a Challenge by an Interested Party

(i) Challenges must be made by an Interested Party and are limited to: the re-classification of activities as inherently governmental or commercial; or the application of commercial reason codes. In addition, challenges must be in writing and:

(A) Identify the activity being challenged as specifically as possible so that the Agency office can identify it;

(B) Specify the location of each activity being challenged and the relevant Agency office;

(C) Include a statement that the activity being challenged should be re-classified as Inherently Governmental or as commercial, and/or that an associated commercial activity reason code should be changed;

(D) Include the Interested Party's reasons for its assertion that the activity being challenged should be re-classified, and/or that an associated commercial reason code should be changed; and

(E) Provide any supporting information or documentation the Interested Party wishes the Agency to consider in support of its challenge, including but not limited to precedent set by other federal agencies that have contracted for a particular activity.

(ii) All items in (d)(1)(i)(A)-(F) are required for each activity or reason code that is being challenged.

(iii) An Interested Party must submit its challenge to the Agency within 30 working days after the date that the OMB publishes a notice in the Federal Register stating that the Agency's FAIR Act inventory is publicly available. If OMB fails to publish the required notice within 45 days after the Agency submits its FAIR Act inventory to OMB for review, and the Agency is directed by [OMB guidance](#) to publish its FAIR Act Inventory on the Agency's public website, an Interested Party should file its challenge within 30 working days after the Agency makes its FAIR Act inventory available to the public on its website. The Agency is not required to consider any challenges to inventories that are untimely filed, including challenges to inventories from previous fiscal years.

(iv) All challenges shall be sent by United States mail, express delivery or similar service to:

IBB Senior Policy Advisor
Broadcasting Board of Governors
330 Independence Ave, S.W.
Washington, DC 20237

(2) The Agency's Decision on Challenges: Within 28 working days after receiving a challenge, the IBB Senior Policy Advisor shall decide the challenge and transmit to the Interested Party a written notification of the Agency's decision. The written notification must include the Agency's rationale for its decision. If the Agency's decision is adverse to the Interested Party's challenge, the written notification must explain the Interested Party's right to file an appeal.

(3) Filing an Appeal:

(i) An Interested Party may appeal an adverse decision to a challenge. The Agency is not required to consider on appeal new reasons why an activity should be re-classified, or a commercial reason code should be changed, when the Interested Party did not include those reasons in its original challenge.

(ii) Appeals must be in writing and shall include:

(A) All reasons for the Interested Party's assertion that the Agency should have decided the challenge in the Interested Party's favor;

(B) Any supporting documentation that the Interested Party wishes the Agency to consider in support of its appeal; and

(C) A copy of the challenge document and the Agency's decision.

(iii) Appeals shall be sent by United States mail, express delivery or similar service to:

IBB Administrative and Secretariat Operations
ATTN: FAIR Act Appeals Committee
Broadcasting Board of Governors
330 Independence Ave, S.W.
Washington, DC 20237

(4) The Agency's FAIR Act Appeals Committee:

(i) Appeals shall be decided by a FAIR Act Appeals Committee, headed by the IBB Chief of Staff. The FAIR Act Appeals Committee shall include a representative designated by the Directors of the Office of Human Resources and the Office of Contracts. In addition, the FAIR Act Appeals Committee will include one representative designated by each of the Directors of VOA, OCB, or IBB when positions within these Agency elements are the subject of an appeal. The Office of General Counsel shall advise the FAIR Act Appeals Committee, as necessary, on applicable laws and regulations.

(ii) Within 10 working days of receipt of the appeal, the Fair Act Appeals Committee must decide the appeal and transmit to the Interested Party a written notification of the decision together with a discussion of the rationale for the decision.

(iii) The Agency's decision on the appeal is final; no further appeals will be considered by the Agency.

(5) If the Agency changes its FAIR Act Inventory due to a Challenge or Appeal:

(i) The IBB Office of Administrative and Secretariat Operations will transmit a copy of any change(s) to the inventory that result from this process to OMB, submit for publication in the Federal Register a notice of public availability, and make those change(s) available to the public on the Agency's website; and

(ii) The Agency's Office of Communications and External Affairs will transmit a copy of any change(s) to the inventory that result from this process to Congress.

(e) DEFINITIONS:

(1) "Inherently Governmental Function" as defined in Section 5 of the FAIR Act, means a function that is so intimately related to the public interest as to require performance by

Federal Government employees. For additional guidance, see [FAIR Act, Section 5\(2\)\(B\)](#) or [OMB Circular A-76](#).

(2) “Interested Party” means:

(i) A private sector source that —

(A) is an actual or prospective offeror for any contract, or other form of agreement, to perform an Agency activity; and

(B) has a direct economic interest in performing an Agency activity that would be adversely affected by a determination not to procure the performance of the activity from a private sector source.

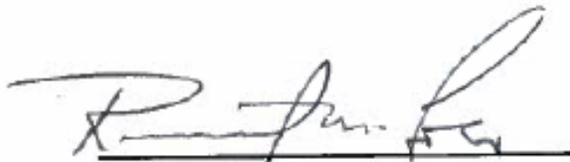
(ii) A representative of any business or professional association that includes within its membership private sector sources referred to in paragraph (e)(2)(i) above.

(iii) An officer or employee of an organization within an executive agency that is an actual or prospective offeror to perform an Agency activity; or

(iv) The head of any labor organization referred to in section 7103(a)(4) of Title 5, United States Code, that includes within its membership officers or employees of an organization referred to in paragraph (e)(2)(iii) above.

(f) EFFECTIVE DATE AND APPROVAL:

Approved by:



Richard M. Lobo
Director
International Broadcasting Bureau