



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## Information Interchange Bulletin No. 017

# Government in the Sunshine Act Basics

### What is the Government in the Sunshine Act?

The Government in the Sunshine Act—better known simply as the Sunshine Act—requires that meetings of certain federal agencies be open to public observation, except for portions of the meetings that are covered by any of the Act's ten enumerated exemptions. The Act also includes requirements for closing and publicizing meetings to which it applies, as well as keeping certain meeting-related records.

### Which agencies are subject to the Sunshine Act?

The Act applies only to: (1) federal agencies headed by collegial bodies—i.e., boards, councils, and commissions—a majority of whose members are presidentially appointed and Senate confirmed; and (2) any subdivision of such an agency authorized to act on its behalf. Only about 50 federal agencies are subject to the Act.

### What agency activities are covered by the Sunshine Act?

The Act only applies to “meetings,” which it defines as deliberations of a quorum of a covered agency's members that “determine or result in the joint conduct or disposition of official agency business.” Notational voting—whereby an agency's members receive written materials, review them, and provide their votes in writing—is not covered by the Act. Likewise, the Act does not apply to meetings of agency personnel other than the members.

### Does the Sunshine Act require agencies to convene meetings to make certain decisions?

No. Courts have repeatedly held that the Act does not require agencies to convene public meetings to conduct their business. If agencies wish to conduct all their business by notational voting or some other approach, nothing in the Act prevents it.

### When can agencies close meetings?

Agencies subject to the Act may close portions of meetings that are likely to:

- Disclose information properly classified in the interest of national security.
- Relate solely to the agency's internal personnel rules and practices.
- Disclose matters specifically exempted from disclosure by statute.
- Disclose trade secrets or confidential business information.
- Involve formally censuring someone or accusing someone of a crime.
- Disclose personal information if disclosure would be a clearly unwarranted invasion of personal privacy.
- Disclose investigatory records in a way that would harm further proceedings.
- Disclose information contained in or related to certain reports prepared by or for an agency that regulates or supervises financial institutions.
- Disclose information that would likely lead to significant financial speculation, significantly endanger a financial institution's stability, or significantly frustrate implementation of a proposed agency action.
- Concern the agency's issuance of a subpoena; participation in certain judicial proceedings or arbitrations; or initiation, conduct, or disposition of certain agency adjudications.

### How do agencies close meetings?

Agencies subject to the Act may close a portion of a covered meeting (or withhold information about it) if one or more of the exceptions listed above applies, a majority of agency members vote to close the portion, and the agency makes a written copy of the vote publicly available.

### Must agencies provide public notice of meetings?

Yes. For any meeting to which the Act applies, agencies must generally, at least a week before the meeting, publish in the *Federal Register*: (1) the meeting's time, place, and subject matter; (2) whether the meeting will be open or closed; and (3) the name and phone number of the agency employee to contact for more information about the meeting.

#### Additional Resources

- [Government in the Sunshine Act](#), ACUS Administrative Procedure Sourcebook ACUS Rec. [2014-2](#), *Government in the Sunshine Act*
- ACUS Rec. [84-3](#), *Improvements in the Administration of the Government in the Sunshine Act*
- Reeve T. Bull, [The Government in the Sunshine Act in the 21st Century](#) (2014) Special Cmte. to Review the Gov't in the Sunshine Act, [Reform of the Government in the Sunshine Act](#) (1995)
- David M. Welborn, William Lyons, & Larry Thomas, [Implementation and Effects of the Federal Government in the Sunshine Act](#) (1984)