

Union Calendar No. 292

114TH CONGRESS
2^D SESSION

H. R. 2347

[Report No. 114-386, Part I]

To amend the Federal Advisory Committee Act to increase the transparency of Federal advisory committees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2015

Mr. CLAY (for himself, Mr. CUMMINGS, Mr. CONNOLLY, and Mr. COOPER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JANUARY 5, 2016

Reported from the Committee on Oversight and Government Reform

JANUARY 5, 2016

The Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend the Federal Advisory Committee Act to increase the transparency of Federal advisory committees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Federal Advisory Committee Act Amendments of 2015”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Ensuring independent advice and expertise.
- Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act
and public disclosure.
- Sec. 4. Increasing transparency of advisory committees.
- Sec. 5. Managing Federal advisory committees.
- Sec. 6. Comptroller General review and reports.
- Sec. 7. Application of Federal Advisory Committee Act to Trade Advisory Com-
mittees.
- Sec. 8. Definitions.
- Sec. 9. Technical and conforming amendments.
- Sec. 10. Effective date.

8 **SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.**

9 (a) BAR ON POLITICAL LITMUS TESTS.—Section 9
 10 of the Federal Advisory Committee Act (5 U.S.C. App.)
 11 is amended—

12 (1) in the section heading, by inserting “MEM-
 13 BERSHIP;” after “ADVISORY COMMITTEES;”;

14 (2) by redesignating subsections (b) and (c) as
 15 subsections (e) and (f), respectively; and

16 (3) by inserting after subsection (a) the fol-
 17 lowing:

18 “(b) APPOINTMENTS MADE WITHOUT REGARD TO
 19 POLITICAL AFFILIATION OR ACTIVITY.—All appointments
 20 to advisory committees shall be made without regard to

1 political affiliation or political activity, unless required by
2 Federal statute.”.

3 (b) MINIMIZING CONFLICTS OF INTEREST.—Section
4 9 of the Federal Advisory Committee Act (5 U.S.C. App.),
5 as amended by subsection (a) of this section, is further
6 amended by inserting after subsection (b) (as added by
7 such subsection (a)) the following:

8 “(c) PUBLIC NOMINATIONS OF COMMITTEE MEM-
9 BERS.—Prior to appointing members to an advisory com-
10 mittee, the head of an agency shall give interested persons
11 an opportunity to suggest potential committee members.
12 The agency shall include a request for comments in the
13 Federal Register notice required under subsection (a) and
14 provide a mechanism for interested persons to comment
15 through the official website of the agency. The agency
16 shall consider any comments submitted under this sub-
17 section in selecting the members of an advisory committee.

18 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

19 “(1) An individual appointed to an advisory
20 committee who is not a full-time or permanent part-
21 time officer or employee of the Federal Government
22 shall be designated as—

23 “(A) a special Government employee, if the
24 individual is providing advice based on the indi-
25 vidual’s expertise or experience; or

1 “(B) a representative, if the individual is
2 representing the views of an entity or entities
3 outside of the Federal Government.

4 “(2) An agency may not designate committee
5 members as representatives to avoid subjecting them
6 to Federal ethics rules and requirements.

7 “(3) The designated agency ethics official for
8 each agency shall review the members of each advisory
9 committee that reports to the agency to determine
10 whether each member’s designation is appropriate,
11 and to redesignate members if appropriate.
12 The designated agency ethics official shall certify to
13 the head of the agency that such review has been
14 made—

15 “(A) following the initial appointment of
16 members; and

17 “(B) at the time a committee’s charter is
18 renewed, or, in the case of a committee with an
19 indefinite charter, every 2 years.

20 “(4) The head of each agency shall inform each
21 individual appointed to an advisory committee that
22 reports to the agency whether the individual is appointed
23 as a special Government employee or as a representative.
24 The agency head shall provide each
25 committee member with an explanation of the dif-

1 ferences between special Government employees and
2 representatives and a summary of applicable ethics
3 requirements. The agency head, acting through the
4 designated agency ethics official, shall obtain signed
5 and dated written confirmation from each committee
6 member that the member received and reviewed the
7 information required by this paragraph.

8 “(5) The Director of the Office of Government
9 Ethics shall provide guidance to agencies on what to
10 include in the summary of ethics requirements re-
11 quired by paragraph (4).

12 “(6) The head of each agency shall, to the ex-
13 tent practicable, develop and implement strategies to
14 minimize the need for written determinations under
15 section 208(b)(3) of title 18, United States Code.
16 Strategies may include such efforts as improving
17 outreach efforts to potential committee members and
18 seeking public input on potential committee mem-
19 bers.”.

20 (c) REGULATIONS IMPLEMENTING FACA.—Section
21 7(c) of the Federal Advisory Committee Act (5 U.S.C.
22 App.) is amended by inserting “promulgate regulations
23 and” after “The Administrator shall”.

1 (d) ENSURING INDEPENDENT ADVICE AND REC-
2 OMMENDATIONS.—The Federal Advisory Committee Act
3 (5 U.S.C. App.) is amended—

4 (1) in section 8—

5 (A) in the section heading, by inserting
6 “INDEPENDENT ADVICE AND RECOMMENDA-
7 TIONS;” after “RESPONSIBILITIES OF AGENCY
8 HEADS;”;

9 (B) by redesignating subsection (b) as sub-
10 section (c); and

11 (C) by inserting after subsection (a) the
12 following:

13 “(b) The head of each agency shall ensure that the
14 agency does not interfere with the free and independent
15 participation, expression of views, and deliberation by
16 committee members. Each advisory committee shall in-
17 clude a statement describing the process used by the advi-
18 sory committee in formulating the advice and rec-
19 ommendations when they are transmitted to the agency.”;
20 and

21 (2) in section 10—

22 (A) in the section heading, by inserting “;
23 CHAIR” after “ATTENDANCE”; and

24 (B) by inserting after subsection (f) the
25 following new subsection:

1 “(g) The Chair shall not be an employee of the agen-
2 cy to which the advisory committee reports, unless—

3 “(1) a statute specifically authorizes selection of
4 such an employee as the Chair; or

5 “(2) the head of the agency directs an employee
6 to serve as the Chair.”.

7 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-**
8 **ERAL ADVISORY COMMITTEE ACT AND PUB-**
9 **LIC DISCLOSURE.**

10 (a) DE FACTO MEMBERS.—Section 4 of the Federal
11 Advisory Committee Act (5 U.S.C. App.) is amended by
12 adding at the end the following new subsection:

13 “(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An
14 individual who is not a full-time or permanent part-time
15 officer or employee of the Federal Government shall be
16 regarded as a member of a committee if the individual
17 regularly attends and participates in committee meetings
18 as if the individual were a member, even if the individual
19 does not have the right to vote or veto the advice or rec-
20 ommendations of the advisory committee.”.

21 (b) SUBCOMMITTEES.—Section 4 of the Federal Ad-
22 visory Committee Act (5 U.S.C. App.), as amended by
23 subsection (a) of this section, is further amended by strik-
24 ing subsection (a) and inserting the following:

1 “(a) APPLICATION.—The provisions of this Act or of
2 any rule, order, or regulation promulgated under this Act
3 shall apply to each advisory committee, including any sub-
4 committee or subgroup thereof, except to the extent that
5 any Act of Congress establishing any such advisory com-
6 mittee specifically provides otherwise. Any subcommittee
7 or subgroup that reports to a parent committee estab-
8 lished under section 9(a) is not required to comply with
9 section 9(f).”.

10 (c) COMMITTEES CREATED UNDER CONTRACT.—
11 Section 3(2) of the Federal Advisory Committee Act (5
12 U.S.C. App.) is amended in the matter following subpara-
13 graph (C) by adding at the end the following: “An advi-
14 sory committee is considered to be established by an agen-
15 cy, agencies, or the President if it is formed, created, or
16 organized under contract, other transactional authority,
17 cooperative agreement, grant, or otherwise at the request
18 or direction of an agency, agencies, or the President.”.

19 (d) ADVISORY COMMITTEES CONTAINING SPECIAL
20 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-
21 visory Committee Act (5 U.S.C. App.), as amended by
22 subsections (a) and (b) of this section, is further amended
23 by adding at the end the following new subsection:

24 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
25 mittee members appointed as special Government employ-

1 es shall not be considered full-time or permanent part-
2 time officers or employees of the Federal Government for
3 purposes of determining the applicability of this Act under
4 section 3(2).”.

5 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
6 **MITTEES.**

7 (a) INFORMATION REQUIREMENT.—Section 11 of the
8 Federal Advisory Committee Act (5 U.S.C. App.) is
9 amended to read as follows:

10 **“SEC. 11. DISCLOSURE OF INFORMATION.**

11 “(a) IN GENERAL.—With respect to each advisory
12 committee, the head of the agency to which the advisory
13 committee reports shall make publicly available in accord-
14 ance with subsection (b) the following information:

15 “(1) The charter of the advisory committee.

16 “(2) A description of the process used to estab-
17 lish and appoint the members of the advisory com-
18 mittee, including the following:

19 “(A) The process for identifying prospec-
20 tive members.

21 “(B) The process of selecting members for
22 balance of viewpoints or expertise.

23 “(C) The reason each member was ap-
24 pointed to the committee.

1 “(D) A justification of the need for rep-
2 resentative members, if any.

3 “(3) A list of all current members, including,
4 for each member, the following:

5 “(A) The name of any person or entity
6 that nominated the member.

7 “(B) Whether the member is designated as
8 a special Government employee or a representa-
9 tive.

10 “(C) In the case of a representative, the
11 individuals or entity whose viewpoint the mem-
12 ber represents.

13 “(4) A list of all members designated as special
14 Government employees for whom written certifi-
15 cations were made under section 208(b) of title 18,
16 United States Code, a copy of each such certifi-
17 cation, a summary description of the conflict necessi-
18 tating the certification, and the reason for granting
19 the certification.

20 “(5) Any recusal agreement made by a member
21 or any recusal known to the agency that occurs dur-
22 ing the course of a meeting or other work of the
23 committee.

24 “(6) A summary of the process used by the ad-
25 visory committee for making decisions.

1 “(7) Detailed minutes of all meetings of the
2 committee and a description of committee efforts to
3 make meetings accessible to the public using online
4 technologies (such as video recordings) or other
5 techniques (such as audio recordings).

6 “(8) Any written determination by the Presi-
7 dent or the head of the agency to which the advisory
8 committee reports, pursuant to section 10(d), to
9 close a meeting or any portion of a meeting and the
10 reasons for such determination.

11 “(9) Notices of future meetings of the com-
12 mittee.

13 “(10) Any additional information considered
14 relevant by the head of the agency to which the advi-
15 sory committee reports.

16 “(b) MANNER OF DISCLOSURE.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the head of an agency shall make the in-
19 formation required to be disclosed under this section
20 available electronically on the official public website
21 of the agency and to the Administrator at least 15
22 calendar days before each meeting of an advisory
23 committee. If the head of the agency determines that
24 such timing is not practicable for any required infor-
25 mation, such head shall make the information avail-

1 able as soon as practicable but no later than 48
2 hours before the next meeting of the committee. An
3 agency may withhold from disclosure any informa-
4 tion that would be exempt from disclosure under sec-
5 tion 552 of title 5, United States Code.

6 “(2) WEBSITE AVAILABILITY.—The head of an
7 agency shall make available electronically, on the of-
8 ficial public website of the agency, detailed minutes
9 and, to the extent available, a transcript or audio or
10 video recording of each advisory committee meeting
11 not later than 30 calendar days after such meeting.

12 “(3) GRANT REVIEWS.—In the case of grant re-
13 views, disclosure of information required by sub-
14 section (a)(3) may be provided in the aggregate
15 rather than by individual grant.

16 “(c) PROVISION OF INFORMATION BY ADMINIS-
17 TRATOR OF GENERAL SERVICES.—The Administrator of
18 General Services shall provide, on the official public
19 website of the General Services Administration, electronic
20 access to the information made available by each agency
21 under this section.

22 “(d) AVAILABILITY OF MEETING MATERIALS.—Ex-
23 cept where prohibited by contractual agreements entered
24 into prior to the effective date of this Act, agencies and
25 advisory committees shall make available to any person,

1 at actual cost of duplication, copies of advisory committee
2 meeting materials.”.

3 (b) CHARTER FILING.—Subsection (f) of section 9 of
4 the Federal Advisory Committee Act (5 U.S.C. App.), as
5 redesignated by section 2(a) of this Act, is amended to
6 read as follows:

7 “(f) No advisory committee shall meet or take any
8 action until an advisory committee charter has been filed
9 with the Administrator, the head of the agency to whom
10 any advisory committee reports, and the standing commit-
11 tees of the Senate and of the House of Representatives
12 having legislative jurisdiction of such agency. Such charter
13 shall contain the following information in the following
14 order:

15 “(1) The committee’s official designation.

16 “(2) The authority under which the committee
17 is established.

18 “(3) The committee’s objectives and the scope
19 of its activity.

20 “(4) A description of the duties for which the
21 committee is responsible, and, if such duties are not
22 solely advisory, a specification of the authority for
23 such functions.

24 “(5) The agency or official to whom the com-
25 mittee reports.

1 “(6) The agency responsible for providing the
2 necessary support for the committee.

3 “(7) The responsibilities of the officer or em-
4 ployee of the Federal Government designated under
5 section 10(e).

6 “(8) The estimated number and frequency of
7 committee meetings.

8 “(9) The period of time necessary for the com-
9 mittee to carry out its purposes.

10 “(10) The committee’s termination date, if less
11 than two years from the date of the committee’s es-
12 tablishment.

13 “(11) The estimated number of members and a
14 description of the expertise needed to carry out the
15 objectives of the committee.

16 “(12) A description of whether the committee
17 will be composed of special Government employees,
18 representatives, or members from both categories.

19 “(13) Whether the agency intends to create
20 subcommittees and if so, the agency official author-
21 ized to exercise such authority.

22 “(14) The estimated annual operating costs in
23 dollars and full-time equivalent positions for such
24 committee.

1 “(15) The recordkeeping requirements of the
2 committee.

3 “(16) The date the charter is filed.

4 A copy of any such charter shall also be furnished to the
5 Library of Congress.”.

6 **SEC. 5. MANAGING FEDERAL ADVISORY COMMITTEES.**

7 (a) COMMITTEE MANAGEMENT OFFICERS.—Sub-
8 section (c) of section 8 of the Federal Advisory Committee
9 Act (5 U.S.C. App.), as redesignated by section 2(d) of
10 this Act, is amended to read as follows:

11 “(c) The head of each agency that has an advisory
12 committee shall designate an Advisory Committee Man-
13 agement Officer who shall—

14 “(1) be a senior official who is—

15 “(A) an expert in implementing the re-
16 quirements of this Act and regulations promul-
17 gated pursuant to this Act; and

18 “(B) the primary point of contact for the
19 General Services Administration;

20 “(2) be responsible for the establishment, man-
21 agement, and supervision of the advisory committees
22 of the agency, including establishing procedures, per-
23 formance measures, and outcomes for such commit-
24 tees;

1 “(3) assemble and maintain the reports,
2 records, and other papers (including advisory com-
3 mittee meeting materials) of any such committee
4 during its existence;

5 “(4) ensure any such committee and cor-
6 responding agency staff adhere to the provisions of
7 this Act and any regulations promulgated pursuant
8 to this Act;

9 “(5) maintain records on each employee of any
10 such committee and completion of training required
11 for any such employee;

12 “(6) be responsible for providing the informa-
13 tion required in section 7(b) of this Act to the Ad-
14 ministrator; and

15 “(7) carry out, on behalf of that agency, the
16 provisions of section 552 of title 5, United States
17 Code, with respect to the reports, records, and other
18 papers described in paragraph (3).”.

19 **SEC. 6. COMPTROLLER GENERAL REVIEW AND REPORTS.**

20 (a) REVIEW.—The Comptroller General of the United
21 States shall review compliance by agencies with the Fed-
22 eral Advisory Committee Act, as amended by this Act, in-
23 cluding whether agencies are appropriately appointing ad-
24 visory committee members as either special Government
25 employees or representatives.

1 (b) REPORT.—The Comptroller General shall submit
2 to the committees described in subsection (c) two reports
3 on the results of the review, as follows:

4 (1) The first report shall be submitted not later
5 than one year after the date of promulgation of reg-
6 ulations under section 7(c) of the Federal Advisory
7 Committee Act (5 U.S.C. App.), as amended by sec-
8 tion 2(c).

9 (2) The second report shall be submitted not
10 later than five years after such date of promulgation
11 of regulations.

12 (c) COMMITTEES.—The committees described in this
13 subsection are the Committee on Oversight and Govern-
14 ment Reform of the House of Representatives and the
15 Committee on Homeland Security and Governmental Af-
16 fairs of the Senate.

17 **SEC. 7. APPLICATION OF FEDERAL ADVISORY COMMITTEE**
18 **ACT TO TRADE ADVISORY COMMITTEES.**

19 Section 135(f)(2)(A) of the Trade Act of 1974 (19
20 U.S.C. 2155(f)(2)(A)) is amended by striking “sub-
21 sections (a) and (b) of sections 10 and 11 of the Federal
22 Advisory Committee Act” and inserting “subsections (a)
23 and (b) of section 10 and subsections (a)(7), (a)(8),
24 (a)(9), (b)(2), and (d) of section 11 of the Federal Advi-
25 sory Committee Act”.

1 **SEC. 8. DEFINITIONS.**

2 Section 3 of the Federal Advisory Committee Act (5
3 U.S.C. App.) is amended by adding at the end the fol-
4 lowing new paragraph:

5 “(5) The term ‘special Government employee’
6 has the meaning given that term in section 202(a)
7 of title 18, United States Code.”.

8 **SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.**

9 Section 7(d)(1) of the Federal Advisory Committee
10 Act (5 U.S.C. App.) is amended—

11 (1) in subparagraph (A), by striking “the rate
12 specified for GS–18 of the General Schedule under
13 section 5332” and inserting “the rate for level IV of
14 the Executive Schedule under section 5315”; and

15 (2) in subparagraph (C)(i), by striking “handi-
16 capped individuals (within the meaning of section
17 501 of the Rehabilitation Act of 1973 (29 U.S.C.
18 794))” and inserting “individuals with disabilities
19 (as defined in section 7(20) of the Rehabilitation Act
20 of 1973 (29 U.S.C. 705(20)))”.

21 **SEC. 10. EFFECTIVE DATE.**

22 This Act shall take effect 30 days after the date of
23 the enactment of this Act.

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