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116TH CONGRESS
1ST SESSION

H. R. 1608

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2019

Mr. CLAY introduced the following bill; which was referred to the Committee on Oversight and Reform, and in addition to the Committees on Ways and Means, and the Budget, 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

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Federal Advisory Committee Act Amendments of 2019''.

(b) TABLE OF CONTENTS.—The table of contents for 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 committees.
Sec. 8. Definitions.
Sec. 9. Technical and conforming amendments.
Sec. 10. Effective date.
Sec. 11. No additional funds authorized.

SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.

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

(1) in the section heading, by inserting "**MEMBERSHIP;**" after "**ADVISORY COMMITTEES;**";

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

(3) by inserting after subsection (a) the following:

"(b) APPOINTMENTS MADE WITHOUT REGARD TO POLITICAL AFFILIATION OR ACTIVITY.—All appointments to advisory committees shall be made without regard to political affiliation or political campaign activity, unless required by Federal statute.".

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

''(c) PUBLIC NOMINATIONS OF COMMITTEE MEMBERS.—

''(1) Before making an appointment to an advisory committee, the head of an agency shall—

''(A) solicit nominations for potential committee members;

''(B) if the head of the agency is required to publish a notice under subsection (a)(2), include in the notice a solicitation for nominations of potential committee members; and

''(C) provide in the notice under subparagraph (B) a mechanism for interested persons to comment through a publicly available website of the agency.

''(2) The head of an agency shall consider any comments submitted in accordance with paragraph (1)(C) in appointing the members of an advisory committee.

''(3) The head of an agency shall solicit nominations under paragraph (1) not less frequently than once every 2 years.

''(4) Notwithstanding paragraph (1), if a vacancy in an advisory committee occurs before the next scheduled solicitation for nominations under this subsection, an agency may appoint a member

from among individuals that were previously nominated to be a member of the advisory committee.

''(d) DESIGNATION OF COMMITTEE MEMBERS.—

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

''(A) a special Government employee, if the individual is providing advice based on the individual's expertise or experience; or

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

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

''(3) The designated agency ethics official for each agency shall review the members of each advisory committee that reports to the agency to determine whether each member's designation is appropriate, and to redesignate members if appropriate. The designated agency ethics official shall certify to the head of the agency that such review has been made—

"(A) following the initial appointment of members; and

"(B) at the time a committee's charter is renewed, or, in the case of a committee with an indefinite charter, every 2 years.

"(4) The head of each agency shall inform each individual who is not a full-time or permanent part-time officer or employee of the Federal Government appointed to an advisory committee that reports to the agency whether the individual is appointed as a special Government employee or as a representative. The agency head shall provide each committee member with an explanation of the differences between special Government employees and representatives and a summary of applicable ethics requirements. The agency head, acting through the designated agency ethics official, shall obtain signed and dated written confirmation from each committee member that the member received and reviewed the information required by this paragraph.

"(5) The Director of the Office of Government Ethics shall provide guidance to agencies on what to include in the summary of ethics requirements required by paragraph (4).

''(6) The head of each agency shall, to the extent practicable, develop and implement strategies to minimize the need for written determinations under section 208(b)(3) of title 18, United States Code. Strategies may include such efforts as improving outreach efforts to potential committee members and seeking public input on potential committee members.

''(7) Nothing in this subsection shall be construed to supersede the inapplicability of this Act with respect to peer review groups appointed under paragraph (16) of section 402(b) of the Public Health Service Act, as described in the flush text following paragraph (25)(B) of such section.''.

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

(d) ENSURING INDEPENDENT ADVICE AND RECOMMENDATIONS.—The Federal Advisory Committee Act (5 U.S.C. App.) is amended—

(1) in section 8—

(A) in the section heading, by inserting ''**INDEPENDENT ADVICE AND REC-**

OMMENDATIONS;'' after ''**RESPONSIBILITIES OF AGENCY HEADS;**'';

(B) by redesignating subsection (b) as subsection (c); and

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

''(b) The head of each agency shall ensure that the agency does not interfere with the free and independent participation, expression of views, and deliberation by committee members. Each advisory committee shall include a statement describing the process used by the advisory committee in formulating the advice and recommendations when they are transmitted to the agency.'';

and

(2) in section 10—

(A) in the section heading, by inserting ''**; CHAIR**'' after ''**ATTENDANCE**''; and

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

''(g) The chair shall not be an employee of the agency to which the advisory committee reports, unless—

''(1) a statute specifically authorizes selection of such an employee as the chair; or

''(2) the head of the agency directs an employee to serve as the chair.''.

SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FEDERAL ADVISORY COMMITTEE ACT AND PUBLIC DISCLOSURE.

(a) SUBCOMMITTEES.—Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by striking subsection (a) and inserting the following:

''(a) APPLICATION.—The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee, including any subcommittee or subgroup thereof, except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise. Any subcommittee or subgroup that reports to a parent committee established under section 9(a) is not required to comply with section 9(f).''.

(b) COMMITTEES CREATED UNDER CONTRACT.—Section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended in the matter following subparagraph (C) by adding at the end the following: ''An advisory committee is considered to be established by an agency, agencies, or the President if it is formed, created, or organized under contract, other transactional authority, cooperative agreement, grant, or otherwise at the request or direction of an agency, agencies, or the President.''.

(c) ADVISORY COMMITTEES CONTAINING SPECIAL GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-

visory Committee Act (5 U.S.C. App.), as amended by subsections (a) and (b) of this section, is further amended by adding at the end the following new subsection:

''(d) SPECIAL GOVERNMENT EMPLOYEES.—Committee members appointed as special Government employees shall not be considered full-time or permanent part-time officers or employees of the Federal Government for purposes of determining the applicability of this Act under section 3(2).''.

SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COMMITTEES.

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

''SEC. 11. DISCLOSURE OF INFORMATION.

''(a) IN GENERAL.—With respect to each advisory committee, the head of the agency to which the advisory committee reports shall make publicly available in accordance with subsection (b) the following information:

''(1) The charter of the advisory committee.

''(2) A description of the process used to establish and appoint the members of the advisory committee, including the following:

''(A) The process for identifying prospective members.

''(B) The process of selecting members for balance of viewpoints or expertise.

''(C) The reason each member was appointed to the committee.

''(D) A justification of the need for representative members, if any.

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

''(A) The name of any person or entity that nominated the member.

''(B) Whether the member is—

''(i) designated as a special Government employee;

''(ii) a representative; or

''(iii) a full-time or permanent part-time officer or employee of the Federal Government.

''(C) In the case of a representative, the individuals or entity whose viewpoint the member represents.

''(4) A list of all members designated as special Government employees for whom written certifications were made under section 208(b) of title 18, United States Code, a copy of each such certification, a summary description of the conflict necessi-

tating the certification, and the reason for granting the certification.

''(5) Any recusal agreement made by a member or any recusal known to the agency that occurs during the course of a meeting or other work of the committee.

''(6) A summary of the process used by the advisory committee for making decisions.

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

''(8) Any written determination by the President or the head of the agency to which the advisory committee reports, pursuant to section 10(d), to close a meeting or any portion of a meeting and the reasons for such determination.

''(9) Notices of future meetings of the committee.

''(10) Any additional information considered relevant by the head of the agency to which the advisory committee reports.

''(b) MANNER OF DISCLOSURE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the head of an agency shall make the information required to be disclosed under subsection (a) available electronically on a publicly available website of the agency and to the Administrator at least 15 calendar days before each meeting of an advisory committee. If the head of the agency determines that such timing is not practicable for any required information, such head shall make the information available as soon as practicable but no later than 48 hours before the next meeting of the committee. An agency may withhold from disclosure any information that would be exempt from disclosure under section 552 of title 5, United States Code.

''(2) WEBSITE AVAILABILITY.—The head of an agency shall make available electronically, on a publicly available website of the agency, detailed minutes and, to the extent available, a transcript or audio or video recording of each advisory committee meeting not later than 45 calendar days after such meeting.

''(3) GRANT REVIEWS.—In the case of grant reviews, disclosure of information required by subsection (a)(3) may be provided in the aggregate rather than by individual grant.

''(c) PROVISION OF INFORMATION BY ADMINISTRATOR OF GENERAL SERVICES.—The Administrator of General Services shall provide, on a publicly available website of the General Services Administration, electronic access to the information made available by each agency under this section.

''(d) AVAILABILITY OF MEETING MATERIALS.—

''(1) IN GENERAL.—Except as provided in paragraph (2) and where prohibited by contractual agreements entered into prior to the effective date of the Federal Advisory Committee Act Amendments of 2019, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of advisory committee meeting materials.

''(2) APPLICABILITY.—Nothing in this subsection shall be construed to require the disclosure of information that is protected from mandatory disclosure by statute.''.

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

''(f) No advisory committee shall meet or take any action until an advisory committee charter has been filed with the Administrator, the head of the agency to whom

any advisory committee reports, and the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information in the following order:

''(1) The committee's official designation.

''(2) The authority under which the committee is established.

''(3) The committee's objectives and the scope of its activity.

''(4) 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.

''(5) The agency or official to whom the committee reports.

''(6) The agency responsible for providing the necessary support for the committee.

''(7) The responsibilities of the officer or employee of the Federal Government designated under section 10(e).

''(8) The estimated number and frequency of committee meetings.

''(9) The period of time necessary for the committee to carry out its purposes.

''(10) The committee's termination date, if less than 2 years from the date of the committee's establishment.

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

''(12) A description of whether the committee will be composed of full- or part-time Government employees, special Government employees, representatives, or a combination of categories.

''(13) Whether the agency intends to create subcommittees and if so, the agency official authorized to exercise such authority.

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

''(15) The recordkeeping requirements of the committee.

''(16) The date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.''.

SEC. 5. MANAGING FEDERAL ADVISORY COMMITTEES.

(a) COMMITTEE MANAGEMENT OFFICERS.—Subsection (c) of section 8 of the Federal Advisory Committee

Act (5 U.S.C. App.), as redesignated by section 2(d) of this Act, is amended to read as follows:

''(c) The head of each agency that has an advisory committee shall designate an Advisory Committee Management Officer who shall—

''(1) be a senior official who is—

''(A) an expert in implementing the requirements of this Act and regulations promulgated pursuant to this Act; and

''(B) the primary point of contact for the General Services Administration;

''(2) ensure the establishment, management, and supervision of the advisory committees of the agency, including establishing procedures, performance measures, and outcomes for such committees;

''(3) ensure the assembly and maintenance of the reports, records, and other papers (including advisory committee meeting materials) of any such committee during its existence;

''(4) ensure any such committee and corresponding agency staff adhere to the provisions of this Act and any regulations promulgated pursuant to this Act;

''(5) ensure the maintenance of records on each employee of any such committee and completion of training required for any such employee;

''(6) be responsible for providing the information required in section 7(b) of this Act to the Administrator; and

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

SEC. 6. COMPTROLLER GENERAL REVIEW AND REPORTS.

(a) REVIEW.—The Comptroller General of the United States shall review compliance by agencies with the Federal Advisory Committee Act, as amended by this Act, including whether agencies are appropriately appointing advisory committee members who are not full-time or permanent part-time officers or employees of the Federal Government as either special Government employees or representatives.

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

(1) The first report shall be submitted not later than 1 year after the date of promulgation of regulations under section 7(c) of the Federal Advisory

Committee Act (5 U.S.C. App.), as amended by section 2(c).

(2) The second report shall be submitted not later than 5 years after such date of promulgation of regulations.

(c) COMMITTEES.—The committees described in this subsection are the Committee on Oversight and Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

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

Section 135(f)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2155(f)(2)(A)) is amended by striking ''subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act'' and inserting ''subsections (a) and (b) of section 10 and subsections (a)(7), (a)(8), (a)(9), (b)(2), and (d) of section 11 of the Federal Advisory Committee Act''.

SEC. 8. DEFINITIONS.

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

''(5) The term 'special Government employee' has the meaning given that term in section 202(a) of title 18, United States Code.''.

SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

(2) in subparagraph (C)(i), by striking ''handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794))'' and inserting ''individuals with disabilities (as defined in section 7(20) of the Rehabilitation Act of 1973)''.

SEC. 10. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

SEC. 11. NO ADDITIONAL FUNDS AUTHORIZED.

No additional funds are authorized to carry out the requirements of this Act and the amendments made by this Act. Such requirements shall be carried out using amounts otherwise authorized.

SEC. 12. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

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