

Calendar No. 362

115TH CONGRESS }
2d Session }

SENATE

{ REPORT
115-217 }

FEDERAL ADVISORY COMMITTEE ACT
AMENDMENTS OF 2017

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

H.R. 70

TO AMEND THE FEDERAL ADVISORY COMMITTEE ACT TO
INCREASE THE TRANSPARENCY OF FEDERAL ADVISORY
COMMITTEES, AND FOR OTHER PURPOSES



MARCH 22, 2018.—Ordered to be printed

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MARCH 22, 2018.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 70]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (H.R. 70) to amend the Federal Advisory Committee Act to increase the transparency of Federal advisory committees, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

H.R. 70, the Federal Advisory Committee Act Amendments of 2017, amends the Federal Advisory Committee Act (FACA), to improve and modernize existing transparency requirements for Federal advisory committees, and to close loopholes that have been used to circumvent current requirements. H.R. 70 also strengthens FACA’s provisions aimed at preserving advisory committee independence, both from Federal agencies and from members’ conflicts

of interest or political affiliation. Finally, H.R. 70 seeks to improve agency compliance with FACA by requiring agencies to designate a senior official to implement FACA and by having the Government Accountability Office (GAO) review and report on compliance.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Federal Government officials often consult with individuals outside of the Federal Government via commissions, committees, councils, task forces, or boards—bodies that are collectively referred to as Federal advisory committees.¹ As discussed below, since their recommendations help inform public policy, Congress has deemed it appropriate to require public transparency of advisory committee membership and activities.

Starting in 1970, a series of Congressional hearings revealed the ways in which advisory committees were being used by agencies to cherry-pick industry leaders to advise on policy in secret.² In addition, agencies did not have a standard set of requirements for advisory committee operations, resulting in uncontrolled costs, missing reports on activities, and duplication of roles between multiple committees.³ As a result, Congress passed FACA in 1972 to give uniform guidance to agencies on how to operate advisory committees and report on their activities.⁴

However, some agencies have circumvented some FACA requirements by exploiting existing loopholes in the law. A 2008 congressional hearing found Federal agencies are able to circumvent FACA requirements by hiring contractors to operate advisory committees, allowing non-voting members to participate in committee activities, and creating subcommittees of advisory committees to carry out the work of the full committee.⁵ Advisory committee members made up of contractors or the subcommittees of advisory committees are not currently required to publicly report on meetings held, as FACA requires for other advisory committees, thereby diminishing public transparency.

Additionally, according to the Administrative Conference of the United States (ACUS), an independent Federal agency responsible

¹ Meghan M. Stuessy, Cong. Research Serv., R44253, *Federal Advisory Committees: An Introduction and Overview 1* (2016), available at <http://www.crs.gov/reports/pdf/R44253>.

² *Advisory Committees: Hearings Before the S. Comm. on Gov't Operations Subcomm. on Intergovernmental Relations*, 91st Cong. (1970).

³ *Presidential Advisory Committees: Hearings Before the H. Comm on Gov't Operations Special Studies Subcomm.*, 91st Cong. (1970).

⁴ P.L. 92-463; S. Rep. No. 92-1098, at 1 (1972).

⁵ *Examining The Federal Advisory Committee Act—Current Issues and Developments: Hearing Before the H. Comm. on Oversight and Gov't Reform Subcomm. on Information Policy, Census, and National Archives*, 110th Cong. (2008) (Testimony of Sidney Shapiro, Assoc. Dean for Research and Dev., Wake Forest School of Law), available at <https://www.gpo.gov/fdsys/pkg/CHRG-110hhrg44910/pdf/CHRG-110hhrg44910.pdf>. On the “contractor loophole”: Mr. Shapiro cited a panel formed under contract the Food and Drug Administration to advise it on issues relating to food and cosmetic safety and a peer review panel formed under contract by the Environmental Protection Agency to report on the carcinogenic effects of benzene. The D.C. Circuit Court determined FACA did not apply to either panel. On the “nonvoting participant loophole”: Mr. Shapiro cited the National Energy Policy Development Group, a national energy plan task force chaired by the Vice President and composed of federal officials, which met with energy producers and trade associations, but the D.C. Circuit Court found did not need to comply to FACA because the non-government individuals did not have a voting role. On the “subcommittee loophole”: Mr. Shapiro cited the Grace Commission, which was created to recommend to the President how to make government operate more efficiently. The Commission created tasks force, three of which reviewed food programs for low-income individuals. The National Anti-Hunger Coalition sued to gain access to the records and reports prepared by the task forces, but the D.C. Circuit Court ruled that because the Grace Commission still needed to consider their work, FACA transparency provisions did not apply to the task forces.

for recommending improvements to Federal administrative process and procedure, non-government groups argue that FACA does not adequately provide for transparency into, or allow for public participation in, advisory committee activities.⁶ ACUS has recommended that advisory committees modernize the way they report information to the public. These recommendations for improving transparency include requiring agencies to post on a website all documents which are required to be made publically available under FACA in advance of meeting dates to which the documents apply.⁷ ACUS also recommended that agencies post on their websites videos of open advisory committee meetings.⁸

Agencies have also misused FACA provisions aimed at providing transparency over potential conflict of interests for advisory committee members. A 2004 GAO report raised concerns that agencies were not taking appropriate steps to disclose potential conflicts of interest of advisory committee members.⁹ Federal committee members can either be designated as a special government employee, a paid or non-paid status performing temporary duties for the government,¹⁰ or they can be designated as a representative of a stakeholder in a specific policy area.¹¹ While Federal statute requires that special government employees comply with Office of Government Ethics (OGE) conflict-of-interest regulations, representatives are not required to disclose conflicts of interest, since their interest is understood to be that of the stakeholder they are chosen to represent.¹²

GAO found that some agencies were designating all of its advisory committee members as representatives, even when the individuals were selected for the committees based on their personal experience and knowledge and did not represent the views of a particular stakeholder.¹³ Further, the OGE has raised concerns that agencies may designate these individuals as representatives specifically to avoid ethics compliance.¹⁴

GAO also recommended changes to improve advisory committee membership, including improving independence and diversity in membership experiences.¹⁵ To ensure a balance of membership on committees, the GAO suggested that agencies ask the public for nominations for committee membership.¹⁶ This recommendation

⁶ Admin. Conference of the U. S., Admin. Conference Recommendation 2011-7, The Federal Advisory Committee Act—Issues and Proposed Reforms 6 (2011) [hereinafter ACUS Recommendations], available at <https://www.acus.gov/sites/default/files/documents/Recommendation-2011-7-Federal-Advisory-Committee-Act.pdf>.

⁷ *Id.* at 13.

⁸ *Id.*

⁹ Gov't Accountability Office, GAO-04-328, Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance 5 (2004) [hereinafter 2004 GAO Report], available at <https://www.gao.gov/assets/250/242039.pdf>.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 13.

¹² *Id.*

¹³ *Id.* at 17.

¹⁴ Office of Gov't Ethics, DO-04-022, Memorandum on SGEs and Representatives on Federal Advisory Committees 2 (2004), available at [https://www.oge.gov/web/oge.nsf/Legal%20Advisories/AAF9F5045D71FA1385257E96005FBDC3/\\$FILE/do-04-022.pdf?open](https://www.oge.gov/web/oge.nsf/Legal%20Advisories/AAF9F5045D71FA1385257E96005FBDC3/$FILE/do-04-022.pdf?open).

¹⁵ Gov't Accountability Office, GAO-08-611T, Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees 11 (2008), available at <https://www.gao.gov/assets/120/119486.pdf>.

¹⁶ 2004 GAO Report at 41.

was separately made by ACUS as a proposal to improve transparency and objectivity of Federal advisory committees.¹⁷

To remove loopholes which have unintentionally shielded certain advisory committee activities from FACA requirements, including public reporting, H.R. 70 expands the definition of advisory committee to include advisory committees which are formed under contract or grant. It also clarifies that FACA and its corresponding rules and regulations apply to subcommittees, or other subgroups, created by advisory committees, except that subcommittees do not have to submit separate charters. Finally, H.R. 70 clarifies that any individual, regardless of their voting status within the committee, who participates in the committee meetings as if they were a member, should be considered a member of the committee for purposes of compliance with FACA.

To address ACUS recommendations to modernize FACA reporting requirements, H.R. 70 requires agencies to post on the agency website all documents which are required to be made publicly available under FACA, in advance of meeting dates to which the documents apply. H.R. 70 also states that after any committee meeting, a video or audio recording, or transcript should be published with the official meeting minutes and required documents. This is not intended to override any existing FACA exemptions, including those related to trade, national security, and other confidential or sensitive topics.

With the goal of improving transparency over possible conflict of interests, H.R. 70 requires agencies to publicly release a list of all members for a given committee, including whether or not they are designated as a special government employee or representative, and who nominated the individual for service. For individuals selected as a representative, the agency is asked to specify which group or interest they have been selected to represent. Agencies are also required to publicly release information related to conflict-of-interest waivers granted to special government employees.

To discourage agencies from labeling their advisory committee members as representatives by default, H.R. 70 codifies a definition of special government employee and representative and asks each agency's ethics officer to review advisory committee members' designation. OGE's current and future guidance on how agencies may determine advisory committee members' appointments should help further clarify this matter.¹⁸

Finally, to improve transparency over committee membership, H.R. 70 requires agencies to publicly release the criteria used to select committee members, including the process for selecting a balance in viewpoints and experience. Following the recommendations of GAO and ACUS on the need to increase diversity in membership experiences and expertise, H.R. 70 directs agencies to take public comments on nominations for committee membership and instructs

¹⁷ ACUS Recommendations at 13.

¹⁸ Office of Gov't Ethics, *Advisory Committee Members*, Feb. 25, 2016, available at <https://www.oge.gov/Web/oge.nsf/Resources/Advisory+Committee+Members>. See also *Office of Gov't Ethics*, 82 x 22, Memorandum dated July 9, 1982 from J. Jackson Walter Director of the Office of Government Ethics to Heads of Departments and Agencies of the Executive Branch regarding Members of Federal Advisory Committees and the Conflict-of-Interest Statutes (1982), available at [https://www.oge.gov/Web/oge.nsf/0/986E5BB2E29A5CDB85257E96005FBBC6/\\$FILE/39cf3009de3340b9a96158c14f88b8ae3.pdf](https://www.oge.gov/Web/oge.nsf/0/986E5BB2E29A5CDB85257E96005FBBC6/$FILE/39cf3009de3340b9a96158c14f88b8ae3.pdf); Office of Gov't Ethics, DO-05-012, Memorandum on Federal Advisory Committee Appointments (2005), available at [https://www.oge.gov/web/oge.nsf/Legal%20Advisories/A568AF31159DD16485257E96005FBDC/\\$FILE/do-05-012_.pdf?open](https://www.oge.gov/web/oge.nsf/Legal%20Advisories/A568AF31159DD16485257E96005FBDC/$FILE/do-05-012_.pdf?open).

agencies to consider any public nominations submitted in this way. However, this is not meant to instruct agencies to only consider publicly-nominated individuals when selecting advisory committee members.

III. LEGISLATIVE HISTORY

Representative Wm. Lacy Clay (D–MO) introduced H.R. 70 on January 3, 2017. The bill passed the House on January 4, 2017, under suspension of the rules.

On January 5, 2017, the Act was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered H.R. 70 at a business meeting on October 4, 2017. The Committee favorably reported the Act by voice vote *en bloc*. Senators present for the vote were Johnson, Lankford, Daines, McCaskill, Tester, Heitkamp, Hassan, and Harris.

IV. SECTION-BY-SECTION ANALYSIS OF THE ACT, AS REPORTED

Section 1. Short title; table of contents

This section designates the short title of the Act as the “Federal Advisory Committee Act Amendments of 2017.” This section also lays out the table of contents for the Act.

Sec. 2. Ensuring independent advice and expertise

This section prohibits agencies from appointing an individual to an advisory committee based on his or her political affiliation, unless the law requires the committee to have appointments based on political affiliation. It also requires that agencies give opportunity for public comment to suggest members for advisory committees.

Additionally, this section requires that all advisory committee members who are not Federal Government employees be designated as either a special government employee, who provides advice based on his or her own expertise, or as a representative of a group outside of the Federal Government. These special government employees should be selected with consideration of his or her conflicts of interests, as defined by 18 U.S.C. §208(b)(3), so that each agency minimizes conflicts of interest in advisory committees.

Finally, this section preserves the independence of advisory committees by directing agencies to not interfere with their activities and prohibiting agency employees from serving as the chair of an advisory committee, unless the authorizing statute specifically states otherwise or the head of an agency directs the employee to serve as chair.

Sec. 3. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure

This section closes several loopholes used to circumvent FACA requirements. First, it specifies that individuals who participate in committee meetings as if they were members shall be considered committee members, even if they do not have a right to vote on committee recommendations.

Second, this section states that FACA requirements apply to all subcommittees of advisory committees, unless the legislation authorizing the advisory committee states otherwise, with the exception that subcommittees do not need to file their own charter.

Third, this section clarifies that advisory committees formed under a contract, grant, or other transactional authority are subject to FACA requirements.

Finally, this section clarifies that the individuals referenced in the previous section who are designated as special government employees according to their selection on a committee based on their own expertise, should not be considered a Federal Government employee for the purposes of determining whether or not an advisory committee is comprised entirely of Federal employees, and thus exempt from FACA requirements.

Sec. 4. Increasing transparency of Advisory Committees

This section lists what information an agency shall make public for each advisory committee as well as how and when the agency must make this information public.

This section also amends what information must be included in the charters which advisory committees are required to file every two years.

Sec. 5. Managing Federal Advisory Committees

This section amends the responsibilities of the Advisory Committee Management Officer, the individual responsible for implementing the laws and regulations for advisory committees and serves as the primary point of contact for the General Services Administration.

Sec. 6. Comptroller General Review and Reports

This section asks the GAO to review agency compliance with FACA as amended by this bill and submit two reports to Congress on agency compliance.

Sec. 7. Application of Federal Advisory Committee Act to Trade Advisory Committees

This section amends the existing exemption for Trade Advisory Committees to publically release the transcripts or recordings of their meetings to ensure that Trade Advisory Committees are also exempt from the new requirements for advisory committee meeting publication in section 4 of this legislation.

Sec. 8. Definitions

This section adds the same definition of “special Government employee” which is in Title 18 of the United States Code.

Sec. 9. Technical and conforming amendments

This section changes the compensation limit for members and staff of advisory committees and corrects a definition for “individuals with disabilities.”

Sec. 10. Effective date

This section establishes the effective date of the Act as 30 days after enactment.

Sec. 11. No additional funds authorized

This section provides that no further funds are authorized to carry out this Act.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 2017.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 70, the Federal Advisory Committee Act Amendments of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 70—Federal Advisory Committee Act Amendments of 2017

Summary: H.R. 70 would amend the Federal Advisory Committee Act (FACA), which governs the operation of most federal advisory committees, to require agencies to disclose additional information about committee activities to the public. It also would expand the act to cover additional federal committees and would require the Government Accountability Office (GAO) to submit reports to the Congress concerning the appointment of advisory committee members. More than 1,000 advisory committees provide advice and guidance to federal agencies on many subjects ranging from organ donation to the operations of the Department of Homeland Security. Those committees, which may also be called commissions, councils, or task forces, have been created to collect a variety of viewpoints on specific policy issues. They can provide advice or make recommendations to federal agencies.

CBO estimates that implementing H.R. 70 would cost \$70 million over the 2018–2022 period, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 70 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 70 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 70 is shown in the following table. The costs of this legislation fall primarily within budget function 800 (general government) but would affect all budget functions that include funding for federal advisory committees.

By fiscal year, in millions of dollars—						
	2018	2019	2020	2021	2022	2018– 2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	15	15	15	15	15	75
Estimated Outlays	10	15	15	15	15	70

Basis of estimate: For this estimate, CBO assumes that H.R. 70 will be enacted in fiscal year 2018 and that the necessary funds will be provided each year. Estimated outlays are based on historical patterns for similar activities.

FACA governs the activities of federal advisory committees. Those committees provide independent advice and recommendations to the federal government. According to the General Services Administration (GSA), there are approximately 1,000 advisory committees, with about 70,000 members, that provide advice and recommendations to about 50 departments and agencies. GSA estimates that the total cost to manage those advisory committees during fiscal year 2016 was \$424 million.

Under FACA, GSA maintains management guidelines for committees and advises committees on implementing those guidelines. The Office of Government Ethics is responsible for developing regulations and guidance for advisory committee members who serve as special government employees and must meet certain requirements pertaining to conflicts of interest. In addition, FACA requires that the advice provided by the committees be objective and publicly available. Meetings of advisory committees are generally open to the public, with certain specified exceptions. Notice of such meetings must be published in advance; all papers, records, and minutes of meetings must be made available for public inspection, and such information is subject to disclosure under the Freedom of Information Act.

According to GSA and other agencies, H.R. 70 would impose more-stringent ethics requirements on all advisory committee members. Agencies would have to make more information about such committees available to the public, make the procedures for establishing an advisory committee and selecting its members more transparent to the public, and extend FACA regulations to cover additional advisory committees that are currently exempt. Under the bill, GAO would be required to produce two reports over the next five years that examine how agencies are appointing advisory committee members. Based on the current cost of administering advisory committees and preparing reports, CBO estimates that implementing the bill would cost each major agency around \$1 million a year—or about \$15 million annually.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 70 could

affect direct spending by agencies not funded through annual appropriations. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

Increase in long term direct spending and deficits: CBO estimates that enacting H.R. 70 would not significantly affect net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 70 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Matthew Pickford; Mandates: Zachary Byrum.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE ACT, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

TITLE 5—APPENDIX

* * * * *

FEDERAL ADVISORY COMMITTEE ACT

* * * * *

SEC 3. DEFINITIONS.

* * * * *

(1) * * *

(2) * * *

(A) * * *

(B) * * *

(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration. *An advisory committee is consid-*

ered 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.

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

SEC. 4. APPLICABILITY; RESTRICTIONS.

[(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.]

(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) * * *
(c) * * *

(d) *TREATMENT OF INDIVIDUAL AS MEMBER.—An individual who is not a full-time or permanent part-time officer or employee of the Federal Government shall be regarded as a member of a committee if the individual regularly attends and participates in committee meetings as if the individual were a member, even if the individual does not have the right to vote or veto the advice or recommendations of the advisory committee.*

(e) *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. 7. RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES; COMMITTEE MANAGEMENT SECRETARIAT, ESTABLISHMENT; REVIEW; RECOMMENDATIONS TO PRESIDENT AND CONGRESS; AGENCY COOPERATION; PERFORMANCE GUIDELINES; UNIFORM PAY GUIDELINES; TRAVEL EXPENSES; EXPENSE RECOMMENDATIONS.

(a) * * *
(b) * * *

(c) The Administrator shall *promulgate regulations and* prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d) * * *

(1) * * *

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of **the rate specified for GS-18 of the General Schedule under section 5332** *the rate for level IV of the Executive Schedule under section 5315* of title 5, United States Code;

(B) * * *

(C) * * *

(i) who are blind or deaf or who otherwise qualify as **handicapped individuals** (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)) *individuals with disabilities (as defined in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705 (20))*, and

* * * * *

SEC. 8. RESPONSIBILITIES OF AGENCY HEADS; INDEPENDENT ADVICE AND RECOMMENDATIONS; ADVISORY COMMITTEE MANAGEMENT OFFICER, DESIGNATION.

(a) * * *

[(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

[(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

[(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

[(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.]

(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.

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

(3) assemble and maintain 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) maintain 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, or other papers described in paragraph (3).

* * * * *

SEC. 9. ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES; MEMBERSHIP; PUBLICATION IN FEDERAL REGISTER; CHARTER: FILING, CONTENTS, COPY.

(a) * * *

(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 activity, unless required by Federal statute.

(c) *PUBLIC NOMINATIONS OF COMMITTEE MEMBERS.*—Prior to appointing members to an advisory committee, the head of an agency shall give interested persons an opportunity to suggest potential committee members. The agency shall include a request for comments in the Federal Register notice required under subsection (a) and provide a mechanism for interested persons to comment through the official website of the agency. The agency shall consider any comments submitted under this subsection in selecting the members of an 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 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.

[(b)](e) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

[(c)](f) No advisory committee shall meet or take any action until an advisory committee charter has been filed with [(1)] the Administrator, [in the case of Presidential advisory committees, or (2) with] the head of the agency to whom any advisory committee [reports and with] 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 of 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 special Government employees, representatives, or members from both 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 dollar 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.

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SEC. 10. ADVISORY COMMITTEE PROCEDURES; MEETINGS; NOTICE, PUBLICATION IN FEDERAL REGISTER; REGULATIONS; MINUTES; CERTIFICATION; ANNUAL REPORT; FEDERAL OFFICER OR EMPLOYEE, ATTENDANCE; CHAIR.

(a) * * *

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(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. 11. [AVAILABILITY OF TRANSCRIPTS; “AGENCY PROCEEDING”] DISCLOSURE OF INFORMATION.

[(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

[(b) As used in this section “agency proceeding” means any proceeding as defined in section 551(12) of title 5, United States Code.]

(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 designated as a special Government employee or a representative.*
 - (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 necessitating 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 this section available electronically on the official public 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 the official public 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 30 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 the official public website of the General Services Administration, electronic access to the information made available by each agency under this section.

(d) AVAILABILITY OF MEETING MATERIALS.—Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of advisory committee meeting materials.

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TITLE 19—CUSTOMS DUTIES

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CHAPTER 12—TRADE ACT OF 1974

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Subchapter 1—Negotiating and Other Authority

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PART 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

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SEC. 2155. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS

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- (a) * * *
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- (f) * * *
- (1) * * *
- (2) * * *

(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of [subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act] *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* (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

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