

110TH CONGRESS  
2D SESSION

# H. R. 5687

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IN THE SENATE OF THE UNITED STATES

JUNE 25, 2008

Received; read twice and referred to the Committee on Homeland Security and  
Governmental Affairs

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## AN ACT

To amend the Federal Advisory Committee Act to increase  
the transparency and accountability 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Federal Advisory Committee Act Amendments of 2008”.

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

See. 1. Short title; table of contents.  
See. 2. Ensuring independent advice and expertise.  
See. 3. Preventing efforts to circumvent the Federal Advisory Committee Act  
and public disclosure.  
See. 4. Increasing transparency of advisory committees.  
See. 5. Comptroller General review and reports.  
See. 6. Definitions.  
See. 7. Effective date.

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

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

10 (1) in the section heading by inserting “MEM-  
11 BERSHIP;” after “ADVISORY COMMITTEES;”;

12 (2) by redesignating subsections (b) and (c) as  
13 subsections (d) and (e), respectively; and

14 (3) by inserting after subsection (a) the fol-  
15 lowing:

16 “(b) APPOINTMENTS MADE WITHOUT REGARD TO  
17 POLITICAL AFFILIATION OR ACTIVITY.—All appointments  
18 to advisory committees shall be made without regard to  
19 political affiliation or political activity, unless required by  
20 Federal statute.”.

21 (b) CONFLICTS OF INTEREST DISCLOSURE.—Section  
22 9 of the Federal Advisory Committee Act (5 U.S.C. App.)

1 is further amended by inserting after subsection (b) (as  
2 added by subsection (a)) the following:

3       “(c) CONFLICTS OF INTEREST DISCLOSURE.—

4           “(1)(A) The head of each agency shall ensure  
5           that no individual appointed to serve on an advisory  
6           committee that reports to the agency has a conflict  
7           of interest that is relevant to the functions to be per-  
8           formed by the advisory committee, unless the head  
9           of the agency determines that the need for the indi-  
10          vidual’s services outweighs the potential impacts of  
11          the conflict of interest.

12           “(B) If the head of the agency makes such a  
13          determination with respect to an individual, nothing  
14          in this subsection is intended to preclude the head  
15          of the agency from requiring the recusal of the indi-  
16          vidual from particular aspects of the committee’s  
17          work.

18           “(C) In the case of an individual appointed as  
19          a representative, the fact that an individual is asso-  
20          ciated with the entity whose views are being rep-  
21          resented by the individual shall not itself be consid-  
22          ered a conflict of interest by the agency.

23           “(2) The head of each agency shall require—

24                “(A) that each individual the agency ap-  
25          points or intends to appoint to serve on an ad-

1           visory committee as a representative inform the  
2           agency official responsible for appointing the in-  
3           dividual in writing of any actual or potential  
4           conflict of interest—

5                   “(i) that exists before appointment or  
6                   that arises while the individual is serving  
7                   on the Committee; and

8                   “(ii) that is relevant to the functions  
9                   to be performed; and

10                  “(B) that, for an individual appointed to  
11                  serve on an advisory committee, the conflict is  
12                  publicly disclosed as described in section 11.

13                  “(3) Nothing in this subsection is intended to  
14                  alter any requirement or obligation for a special  
15                  Government employee under the Ethics in Govern-  
16                  ment Act (5 U.S.C. App.) or other applicable ethics  
17                  law, including any requirement to file a financial dis-  
18                  closure report. The head of each agency shall require  
19                  that each individual the agency appoints as a special  
20                  Government employee inform the agency in writing  
21                  of any conflict that exists before appointment or  
22                  that arises while the individual is serving on the  
23                  committee to the extent any financial disclosure re-  
24                  quired by the Ethics in Government Act (5 U.S.C.  
25                  app.) or other applicable law would not uncover the

1       conflict of interest as such term is defined in regulations  
2       promulgated by the Office of Government Ethics  
3       to carry out this subsection.

4           “(4) The head of each agency shall ensure that  
5       each report of an advisory committee that reports to  
6       the agency is the result of the advisory committee’s  
7       judgment, independent from the agency. Each advisory  
8       committee shall include in each report of the committee a statement describing the process used  
9       by the advisory committee in formulating the recommendations or conclusions contained in the report.”.

13           (c) REGULATIONS.—

14           (1) REGULATIONS RELATING TO CONFLICTS OF  
15       INTEREST.—Not later than 180 days after the date  
16       of the enactment of this Act, the Director of the Office  
17       of Government Ethics, in consultation with the Administrator of General Services, shall promulgate—

20           (A) regulations defining the term “conflict of interest”;

22           (B) regulations identifying the method by which individuals must disclose conflicts and the period of time for which a representative or special Government employee, or a candidate

1 for appointment as a representative or special  
2 Government employee, shall look back in time  
3 to determine whether an interest is considered  
4 a conflict for the purpose of the notification re-  
5 quirement in subsection (c) of section 9 of the  
6 Federal Advisory Committee Act, as added by  
7 this section; and

8 (C) such other regulations as the Director  
9 finds necessary to carry out and ensure the en-  
10 forcement of such subsection (c).

11 (2) REGULATIONS IMPLEMENTING FACA.—Sec-  
12 tion 7(c) of the Federal Advisory Committee Act (5  
13 U.S.C. App.) is amended by inserting after “(c)” the  
14 following: “The Administrator shall promulgate reg-  
15 ulations as necessary to implement this Act.”.

16 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-  
17 ERAL ADVISORY COMMITTEE ACT AND PUB-  
18 LIC DISCLOSURE.**

19 (a) DE FACTO MEMBERS.—Section 4 of the Federal  
20 Advisory Committee Act (5 U.S.C. App.) is amended by  
21 adding at the end the following:

22 “(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An  
23 individual who is not a full-time or permanent part-time  
24 officer or employee of the Federal Government shall be  
25 regarded as a member of a committee if the individual

1 regularly attends and participates in committee meetings  
2 as if the individual were a member, even if the individual  
3 does not have the right to vote or veto the advice or rec-  
4 ommendations of the advisory committee.”.

5 (b) INTERAGENCY ADVISORY COMMITTEES.—Section  
6 11 of the Federal Advisory Committee Act (5 U.S.C.  
7 App.) is amended by adding at the end the following:

8 “(f) INTERAGENCY ADVISORY COMMITTEES.—(1)  
9 Any communication between—

10 “(A) an interagency advisory committee estab-  
11 lished by the President or the Vice President or any  
12 member or staff acting on behalf of such an inter-  
13 agency advisory committee, and

14 “(B) any person who is not an officer or em-  
15 ployee of the Federal Government,

16 shall be made available for public inspection and  
17 copying. Any portion of a communication that in-  
18 volves a matter described in section 552(b) of title  
19 5, United States Code, or that is subject to a valid  
20 constitutionally based privilege against such disclo-  
21 sure, may be withheld from public disclosure.

22 “(2) In this subsection, the term ‘interagency advi-  
23 sory committee’ means any committee, board, commission,  
24 council, conference, panel, task force, or other similar  
25 group, or any subcommittee or other subgroup thereof, es-

1 established in the interest of obtaining advice or rec-  
2 ommendations for the President or the Vice President,  
3 that is composed wholly of full-time, or permanent part-  
4 time, officers or employees of the Federal Government and  
5 includes officers or employees of at least two separate Fed-  
6 eral agencies but does not include an advisory committee  
7 as defined in section 3(2) of this Act.

8       “(3) This subsection is not intended to apply to cabi-  
9 net meetings, the National Security Council, the Council  
10 of Economic Advisors, or any other permanent advisory  
11 body established by statute.”.

12       (c) SUBCOMMITTEES.—Section 4 of the Federal Ad-  
13 visory Committee Act (5 U.S.C. App.) is amended by  
14 striking subsection (a) and inserting the following:

15       “(a) APPLICATION.—The provisions of this Act or of  
16 any rule, order, or regulation promulgated under this Act  
17 shall apply to each advisory committee, including any sub-  
18 committee or subgroup thereof, except to the extent that  
19 any Act of Congress establishing any such advisory com-  
20 mittee specifically provides otherwise. Any subcommittee  
21 or subgroup that reports to a parent committee estab-  
22 lished under section 9(a) is not required to comply with  
23 section 9(e). In this subsection, the term ‘subgroup’ in-  
24 cludes any working group, task force, or other entity

1 formed for the purpose of assisting the committee or any  
2 subcommittee of the committee in its work.”.

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

12 (e) ADVISORY COMMITTEES CONTAINING SPECIAL  
13 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-  
14 visory Committee Act (5 U.S.C. App.) is further amended  
15 by adding at the end the following new subsection:

16 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-  
17 mittee members appointed as special government employ-  
18 ees shall not be considered full-time or part-time officers  
19 or employees of the Federal Government for purposes of  
20 determining the applicability of this Act under section  
21 3(2).”.

1   **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**  
2                   **MITTEES.**

3               (a) INFORMATION REQUIREMENT.—Section 11 of the  
4   Federal Advisory Committee Act (5 U.S.C. App.) is  
5   amended—

6               (1) by striking the section designation and  
7   heading and inserting the following:

8   **“SEC. 11. DISCLOSURE OF INFORMATION.”;**

9               (2) by redesignating subsection (a) as sub-  
10   section (d) and in that subsection—

11               (A) by inserting the following subsection  
12   heading: “AVAILABILITY OF PAPER COPIES OF  
13   TRANSCRIPTS.—”; and

14               (B) by inserting after “duplication,” the  
15   following: “paper”;

16               (3) by striking “(b)” and inserting “(e) AGEN-  
17   CY PROCEEDING DEFINED.—”; and

18               (4) by inserting before subsection (d), as redes-  
19   gnated by paragraph (2), the following new sub-  
20   sections:

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

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

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

4           “(A) The process for identifying prospec-  
5        tive members.

6           “(B) The process of selecting members for  
7        balance of viewpoints or expertise.

8           “(C) A justification of the need for rep-  
9        resentative members, if any.

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

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

14          “(B) The reason the member was ap-  
15        pointed to the committee.

16          “(C) Whether the member is designated as  
17        a special government employee or a representa-  
18        tive.

19          “(D) In the case of a representative, the  
20        individuals or entity whose viewpoint the mem-  
21        ber represents.

22          “(E) Any conflict of interest relevant to  
23        the functions to be performed by the committee.

24          “(4) A list of all members designated as special  
25        government employees for whom written certifi-

1 cations were made under section 208(b) of title 18,  
2 United States Code, a summary description of the  
3 conflict necessitating the certification, and the rea-  
4 son for granting the certification.

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

7 “(6) Transcripts or audio or video recordings of  
8 all meetings of the committee.

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

14 “(8) Notices of future meetings of the com-  
15 mittee.

16 “(9) Any additional information considered rel-  
17 evant by the head of the agency to which the advi-  
18 sory committee reports.

19 “(b) MANNER OF DISCLOSURE.—

20 “(1) Except as provided in paragraph (2), the  
21 head of an agency shall make the information re-  
22 quired to be disclosed under this section available  
23 electronically on the official public internet site of  
24 the agency at least 15 calendar days before each  
25 meeting of an advisory committee. If the head of the

1 agency determines that such timing is not practicable for any required information, he 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.

9                 “(2) The head of an agency shall make available electronically, on the official public internet site of the agency, a transcript or audio or video recording of each advisory committee meeting not later than 30 calendar days after the meeting.

14                 “(c) PROVISION OF INFORMATION BY ADMINISTRATOR OF GENERAL SERVICES.—The Administrator of General Services shall provide, on the official public internet site of the General Services Administration, electronic access to the information made available by each agency under this section.”.

20                 (b) CHARTER FILING.—Section 9(e) of the Federal Advisory Committee Act (5 U.S.C. App.), as redesignated by section 2, is amended—

23                         (1) by striking “with (1) the Administrator,” and all that follows through “, or” and inserting “(1) with the Administrator and”;

1 (2) by striking “and” at the end of subparagraph-  
2 graph (I);

3 (3) by striking the period and inserting a semi-  
4 colon at the end of subparagraph (J); and

5 (4) by adding at the end the following new sub-  
6 paragraphs:

7                   “(K) the authority under which the committee  
8                   is established;

9               “(L) the estimated number of members and a  
10              description of the expertise needed to carry out the  
11              objectives of the committee;

12                   “(M) a description of whether the committee  
13                   will be composed of special government employees,  
14                   representatives, or members from both categories;  
15                   and

## 19 SEC. 5. 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 2.

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

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

15 **SEC. 6. DEFINITIONS.**

16          Section 3 of the Federal Advisory Committee Act (5  
17 U.S.C. App.) is amended by adding at the end the fol-  
18 lowing new paragraphs:

19           “(5) The term ‘representative’ means an indi-  
20 vidual who is not a full-time or part-time employee  
21 of the Federal Government and who is appointed to  
22 an advisory committee to represent the views of an  
23 entity or entities outside the Federal Government.

1           “(6) The term ‘special Government employee’  
2        has the same meaning as in section 202(a) of title  
3        18, United States Code.”.

4 **SEC. 7. EFFECTIVE DATE.**

5        This Act shall take effect 30 days after the date of  
6    the enactment of this Act, except as otherwise provided  
7    in section 2(c)(1).

Passed the House of Representatives June 24, 2008.

Attest:                   LORRAINE C. MILLER,  
*Clerk.*