

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 1320

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IN THE SENATE OF THE UNITED STATES

JULY 27, 2010

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 2010”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for  
5 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. Comptroller General review and reports.

Sec. 6. Application of Federal Advisory Committee Act to Trade Advisory Com-  
mittees.

Sec. 7. Definitions.

Sec. 8. 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 (e) and (f), 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.”.

1 (b) MINIMIZING CONFLICTS OF INTEREST.—Section  
2 9 of the Federal Advisory Committee Act (5 U.S.C. App.)  
3 is further amended by inserting after subsection (b) (as  
4 added by subsection (a)) the following:

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

15 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

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

20 “(A) a special government employee, if the  
21 individual is providing advice based on the indi-  
22 vidual’s expertise or experience; or

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

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

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

12                   “(A) following the initial appointment of  
13 members; and

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

17           “(4) The head of each agency shall inform each  
18 individual appointed to an advisory committee that  
19 reports to the agency whether the individual is appointed  
20 as a special government employee or as a representative.  
21 The agency head shall provide each committee member  
22 with an explanation of the differences between special  
23 government employees and representatives and a summary of  
24 applicable ethics requirements. The agency head, acting  
25 through the

1 designated agency ethics official, shall obtain signed  
2 and dated written confirmation from each committee  
3 member that the member received and reviewed the  
4 information required by this paragraph.

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

9 “(6) The head of each agency shall, to the ex-  
10 tent practicable, develop and implement strategies to  
11 minimize the need for written determinations under  
12 section 208(b)(1) of title 18, United States Code.  
13 Strategies may include such efforts as improving  
14 outreach efforts to potential committee members and  
15 seeking public input on potential committee mem-  
16 bers.”.

17 (c) REGULATIONS IMPLEMENTING FACA.—Section  
18 7(c) of the Federal Advisory Committee Act (5 U.S.C.  
19 App.) is amended by inserting after “(c)” the following:  
20 “The Administrator shall promulgate regulations as nec-  
21 essary to implement this Act.”.

1 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-**  
2 **ERAL ADVISORY COMMITTEE ACT AND PUB-**  
3 **LIC DISCLOSURE.**

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

7 “(d) TREATMENT OF INDIVIDUAL AS MEMBER.—An  
8 individual who is not a full-time or permanent part-time  
9 officer or employee of the Federal Government shall be  
10 regarded as a member of a committee if the individual  
11 regularly attends and fully participates in committee meet-  
12 ings as if the individual were a member, even if the indi-  
13 vidual does not have the right to vote or veto the advice  
14 or recommendations of the advisory committee.”.

15 (b) SUBCOMMITTEES.—Section 4 of the Federal Ad-  
16 visory Committee Act (5 U.S.C. App.) is amended by  
17 striking subsection (a) and inserting the following:

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

1 cludes any working group, task force, or other entity  
2 formed for the purpose of assisting the committee or any  
3 subcommittee of the committee in its work.”.

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

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

17 “(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-  
18 mittee members appointed as special government employ-  
19 ees shall not be considered full-time or permanent part-  
20 time officers or employees of the Federal Government for  
21 purposes of determining the applicability of this Act under  
22 section 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 redес-  
19 igned 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) The reason each member was ap-  
9                   pointed to the committee.

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

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

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

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

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

22           “(4) A list of all members designated as special  
23           government employees for whom written certifi-  
24           cations were made under section 208(b) of title 18,  
25           United States Code, a copy of each such certifi-

1 cation, a summary description of the conflict necessi-  
2 tating the certification, and the reason for granting  
3 the certification.

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

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

10 “(7) Transcripts or audio or video recordings of  
11 all meetings of the committee.

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

17 “(9) Notices of future meetings of the com-  
18 mittee.

19 “(10) Any additional information considered  
20 relevant by the head of the agency to which the advi-  
21 sory committee reports.

22 “(b) MANNER OF DISCLOSURE.—

23 “(1) Except as provided in paragraph (2), the  
24 head of an agency shall make the information re-  
25 quired to be disclosed under this section available

1 electronically on the official public internet site of  
2 the agency at least 15 calendar days before each  
3 meeting of an advisory committee. If the head of the  
4 agency determines that such timing is not prac-  
5 ticable for any required information, he shall make  
6 the information available as soon as practicable but  
7 no later than 48 hours before the next meeting of  
8 the committee. An agency may withhold from disclo-  
9 sure any information that would be exempt from dis-  
10 closure under section 552 of title 5, United States  
11 Code.

12 “(2) The head of an agency shall make avail-  
13 able electronically, on the official public internet site  
14 of the agency, a transcript or audio or video record-  
15 ing of each advisory committee meeting as required  
16 by subsection (a)(6) not later than 30 calendar days  
17 after the meeting.

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

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

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

7 (2) by striking “and” at the end of subpara-  
8 graph (I);

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

11 (4) by adding at the end the following new sub-  
12 paragraphs:

13 “(K) the authority under which the committee  
14 is established;

15 “(L) the estimated number of members and a  
16 description of the expertise needed to carry out the  
17 objectives of the committee;

18 “(M) a description of whether the committee  
19 will be composed of special government employees,  
20 representatives, or members from both categories;  
21 and

22 “(N) whether the committee has the authority  
23 to create subcommittees and if so, the agency official  
24 authorized to exercise such authority.”.

1 **SEC. 5. COMPTROLLER GENERAL REVIEW AND REPORTS.**

2 (a) REVIEW.—The Comptroller General of the United  
3 States shall review compliance by agencies with the Fed-  
4 eral Advisory Committee Act, as amended by this Act, in-  
5 cluding whether agencies are appropriately appointing ad-  
6 visory committee members as either special government  
7 employees or representatives.

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

11 (1) The first report shall be submitted not later  
12 than one year after the date of promulgation of reg-  
13 ulations under section 2.

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

17 (c) COMMITTEES.—The committees described in this  
18 subsection are the Committee on Oversight and Govern-  
19 ment Reform of the House of Representatives and the  
20 Committee on Homeland Security and Governmental Af-  
21 fairs of the Senate.

22 **SEC. 6. APPLICATION OF FEDERAL ADVISORY COMMITTEE**  
23 **ACT TO TRADE ADVISORY COMMITTEES.**

24 Section 135(f)(2)(A) of the Trade Act of 1974 (19  
25 U.S.C. 2155) is amended by striking “subsection (a) and  
26 (b) of sections 10 and 11 of the Federal Advisory Com-

1 mittee Act” and inserting “subsections (a) and (b) of sec-  
2 tion 10 and subsections (a)(7), (a)(8), (a)(9), (d), and (e)  
3 of section 11 of the Federal Advisory Committee Act”.

4 **SEC. 7. DEFINITIONS.**

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

8 “(5) The term ‘special Government employee’  
9 has the same meaning as in section 202(a) of title  
10 18, United States Code.”.

11 **SEC. 8. EFFECTIVE DATE.**

12 This Act shall take effect 30 days after the date of  
13 the enactment of this Act.

Passed the House of Representatives July 26, 2010.

Attest: LORRAINE C. MILLER,  
*Clerk.*