

FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS OF
2009

JUNE 4, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. TOWNS, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 1320]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 1320) to amend the Federal Advisory
Committee Act to increase the transparency and accountability of
Federal advisory committees, and for other purposes, having con-
sidered the same, report favorably thereon without amendment and
recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1320, the “Federal Advisory Committee Act Amendments of 2009”, was introduced on March 5, 2009, by Reps. Wm. Lacy Clay and Edolphus Towns. H.R. 1320 would strengthen the Federal Advisory Committee Act (FACA) and close loopholes that have developed in the implementation of the Act.

BACKGROUND AND NEED FOR LEGISLATION

FACA was enacted in 1972 in response to concerns that federal advisory committees were becoming increasingly common but had little oversight or accountability. FACA was aimed at making federal advisory committees more accountable, transparent, balanced, and independent from the influence of special interests. Advisory committees play a critical role in giving the president and agencies advice on complex issues. According to the General Services Administration (GSA), there were more than 900 advisory committees in 2008 with close to 64,000 members.

Agencies have not consistently implemented FACA in a way that ensures that advisory committees are appropriately transparent and balanced. As documented in a staff report, there is evidence that appointments to scientific advisory boards have been based on the political views of a potential appointee rather than the candidate’s scientific expertise.¹ H.R. 1320 prohibits the selection of a committee member based on the member’s political affiliation or activity.

The independence of advisory committees has been impaired by conflicts of interest. To address this issue, the bill requires agencies to obtain disclosures of relevant conflicts of interest from prospective committee members and prohibits each agency from appointing an individual with a relevant conflict of interest unless the need for the individual’s services outweighs the potential impacts of the conflict. The bill also requires agencies to publicly disclose the conflicts of members appointed to advisory committees.

The courts have created loopholes in FACA that undermine the purposes of the Act. One loophole in FACA created by the courts is a retreat from the de facto membership doctrine. Under FACA, a committee made up exclusively of federal government employees is not considered an “advisory committee” for purposes of the Act. The D.C. Circuit Court of Appeals held in *Ass’n of American Physicians & Surgeons, Inc. v. Clinton* that even if a committee is formally made up only of federal employees, if a private citizen regularly attends and participates in a committee as if he were a member that person is considered a member and the committee must comply with FACA.² Then in *In re Cheney*, the D.C. Circuit Court of Appeals moved away from the de facto membership doctrine by holding that an individual can be considered a member of an advisory committee only if the individual has a vote or veto over the committee’s decisions.³ H.R. 1320 clarifies that a participant who is not a federal government employee is considered a member of a

¹ Committee on Government Reform, Special Investigations Division, U.S. House of Representatives, *Politics and Science in the Bush Administration* (Aug. 2003) (online at <http://oversight.house.gov/documents/20080130103545.pdf>).

² *Ass’n of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 915 (D.C. Cir. 1993).

³ *In re Cheney*, 406 F.3d 723, 728 (D.C. Cir. 2005)

committee if that person regularly attends and participates in committee meetings, as if a member, even if the individual cannot cast a vote.

In *Food Chemical News v. Young*,⁴ the D.C. Circuit Court of Appeals created another loophole in FACA under which the requirements of FACA do not apply to committees set up by contractors. H.R. 1320 closes this loophole by clarifying that an advisory committee is considered to be established by an agency or the president if it is formed under contract at the request or direction of an agency or the president.

The bill also clarifies that subcommittees and task forces set up by advisory committees are required to comply with FACA. In 2001, GSA changed its regulations to say that subcommittees do not have to comply with FACA. Under this 2001 change, an advisory committee can avoid the open meeting and disclosure requirements of FACA by conducting its business through subcommittees.

LEGISLATIVE HISTORY

H.R. 1320 was introduced on March 5, 2009, and referred to the Committee on Oversight and Government Reform. The Subcommittee on Information Policy, Census, and National Archives held a hearing on April 2, 2008, to discuss the merits of H.R. 5687, which was substantially similar to H.R. 1320. On March 10, 2009, the Committee considered H.R. 1320 and ordered the bill to be reported favorably, as introduced, by a vote of 16–1.

SECTION-BY-SECTION

Section 1. Short title; table of contents

Subsection (a) provides that the short title of H.R. 1320 is the “Federal Advisory Committee Act Amendments of 2009.”

Subsection (b) provides a table of contents.

Section 2. Ensuring independent advice and expertise

Subsection (a) requires that appointments to advisory committees be made without regard to political affiliation or political activity, unless such consideration is required by federal statute.

Subsection (b) prohibits agencies from appointing advisory committee members who have relevant conflicts unless the head of the agency determines that the need for an individual’s services outweighs the potential impacts of the conflict. Subsection (b) clarifies that this requirement does not impact an agency head’s ability to require a committee member to recuse themselves from particular aspects of a committee’s work. This subsection also clarifies that a representative member’s association with the entity the member is appointed to represent is not itself a conflict requiring exclusion from a committee.

Under this subsection, the head of each agency must require any prospective committee member the agency intends to appoint as a representative to disclose in writing any relevant conflict of interest that exists prior to appointment or that arises while the individual is serving on the committee. The agency must publicly dis-

⁴*Food chem. News v. Young*, 900 F.2d 328 (D.C. Cir. 1990).

close the conflict of interest if the individual is appointed to a committee.

Subsection (b) clarifies that nothing in the subsection impacts the duty of a special government employee to comply with all applicable ethics laws, including filing financial disclosure reports. The head of each agency must require any committee member appointed as a special government employee to disclose in writing any conflict of interest, as defined by the Office of Government Ethics (OGE), that wouldn't otherwise be uncovered by a financial disclosure report.

This subsection requires the head of each agency to ensure that any report of an advisory committee is the result of the advisory committee's independent judgment. Advisory committees are required under this subsection to include in their reports a description of the process used to formulate the recommendations or conclusions contained in the report.

Subsection (c) requires the Director of OGE, in consultation with the Administrator of GSA, to issue regulations within six months of enactment defining conflict of interest, identifying how and for what period of time individuals are to disclose conflicts, and such other regulations as the Director finds necessary to implement and enforce the conflict disclosure requirements added by the bill.

This subsection also amends FACA to provide the Administrator of GSA the authority to promulgate regulations as necessary to implement the Act.

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

Subsection (a) provides that a participant who is not a federal government employee is considered a member of a committee if he regularly attends and participates in committee meetings as if he were a member, even if he does not have the right to vote. Any person who attends or participates in an advisory committee meeting will not necessarily be considered a member under this subsection. This subsection is aimed at covering individuals who regularly participate in the fact-gathering or deliberative process of an advisory committee. Under this subsection, an advisory committee may not avoid FACA by only giving federal employees the right to vote while having individuals who are not federal employees participate as if they were members. As the D.C. Circuit Court of Appeals articulated in *Ass'n of American Physicians & Surgeons, Inc. v. Clinton*:

When an advisory committee of wholly government officials brings in a "consultant" for a one-time meeting, FACA is not triggered because the consultant is not really a member of the advisory committee But a consultant may still be properly described as a member of an advisory committee if his involvement and role are functionally indistinguishable from those of other members. Whether they exercise any supervisory or decisionmaking authority is irrelevant. If a "consultant" regularly attends and fully participates in working group meetings as if he were a "member," he should be regarded as a member. Then his status as a private citizen would disqualify the

working group from the section 3(2) exemption for meetings of full-time government officials.⁵

Subsection (b) requires subcommittees and task forces set up by advisory committees to comply with FACA except that a subcommittee that reports to a parent committee does not have to comply with the FACA requirements related to filing a charter.

Subsection (c) provides that an advisory committee is considered to be established by an agency or the president (and therefore is subject to FACA) if it is formed, created, or organized under contract, other transactional authority, or otherwise at the request or direction of an agency or the president.

Subsection (d) clarifies that an advisory committee that includes members appointed as special government employees is subject to the requirements of FACA. Section 3(2) of FACA provides that the Act does not apply to committees made up wholly of full-time officers or employees of the federal government. This subsection is intended to clarify that a committee may not avoid FACA under section 3(2) if any member of the committee is only a government employee for the purpose of serving on the committee.

Section 4. Increasing transparency of Advisory Committees

Subsection (a) requires the head of each agency to make publicly available, for each advisory committee that reports to the agency, certain information such as: the charter of the committee; the process of selecting members for balance of viewpoints and expertise; a list of all current members; the reason each member was appointed; whether each member is designated as a special government employee or a representative; any conflict of interest relevant to the functions to be performed by the committee; a summary of the process used by the committee to make decisions; and transcripts or audio or video recordings of all meetings of the committee.

Agencies are required under this subsection to make the specified information available on the agency's official internet site at least 15 days before each committee meeting. If the agency head determines that a particular piece of information cannot be made available within that time, the agency head must make the information available as soon as practicable but at least 48 hours before the next committee meeting. Transcripts or audio or video recordings are required to be made available within 30 days after a meeting. GSA must provide access on its internet site to the information made available by agencies under this section.

Subsection (b) enhances the disclosure requirements for advisory committee charters by requiring committee charters to include: the authority under which the committee is established; the estimated number of members and a description of the expertise needed to carry out the objectives of the committee; a description of whether the committee will be composed of special government employees, representatives, or members from both categories; and whether the committee has the authority to create subcommittees and if so, the agency official authorized to exercise such authority.

⁵*Ass'n of American Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 915 (D.C. Cir. 1993).

Section 5. Comptroller general review and reports

Subsection (a) requires the Government Accountability Office (GAO) to review agency compliance with FACA, including whether agencies are appropriately appointing advisory committee members as either special government employees or representatives.

Subsection (b) requires GAO to submit to the committees identified in subsection (c) two reports on the results of GAO's review. GAO must submit one report within one year of the regulations promulgated by OGE under section 2 and must submit a second report within five years of the date OGE promulgates the required regulations.

Subsection (c) identifies the committees GAO must report to as the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate.

Section 6. Definitions

This section includes the following definitions:

The term "representative" means an individual who is not a full-time or part-time federal government employee who is appointed to an advisory committee to represent the views of a non-governmental entity; and

The term "special government employee" has the same meaning as in section 202(a) of Title 18 United States Code. That section provides, in part, that a special government employee is an officer or employee of the executive or legislative branch, of any independent agency, or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis for no more than 130 days during any period of 365 consecutive days.

Section 7. Effective date

This Act shall take effect 30 days after the date of enactment except as otherwise provided in section 2(c)(1) which requires the Director of OGE to promulgate regulations within 6 months of enactment.

EXPLANATION OF AMENDMENTS

During Committee consideration of H.R. 1320, Representative Issa offered an amendment to exclude the spouse of a sitting President from the classification of a full-time or part-time officer or employee of the federal government for purposes of the Act. The amendment was debated and then withdrawn.

COMMITTEE CONSIDERATION

On Tuesday, March 10, 2009, the Committee met in open session and ordered H.R. 1320 to be reported favorably to the House by a rollcall vote of 16–1.

ROLLCALL VOTES
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM - 111TH CONGRESS
ROLL CALL VOTE # 001

BILL: H.R. 1320, the "Federal Advisory Committee Act Amendments of 2009".

DISPOSITION: Ordered reported favorably by a roll call vote of 16 yeas to 1 nay.

Democrats	Aye	No	Present	Republicans	Aye	No	Present
MR. TOWNS (<i>Chairman</i>)	X			MR. ISSA (<i>Ranking</i>)		X	
MR. KANJORSKI				MR. BURTON			
MS. MALONEY	X			MR. McHUGH			
MR. CUMMINGS	X			MR. MICA			
MR. KUCINICH	X			MR. SOUDER			
MR. TIERNEY	X			MR. PLATTS			
MR. CLAY	X			MR. DUNCAN			
MS. WATSON	X			MR. TURNER			
MR. LYNCH	X			MR. WESTMORELAND			
MR. COOPER				MR. McHENRY			
MR. CONNOLLY	X			MR. BILBRAY			
MS. NORTON				MR. JORDAN			
MR. KENNEDY	X			MR. FLAKE			
MR. DAVIS (IL)	X			MR. FORTENBERRY			
MR. Van HOLLEN				MR. CHAFFETZ			
MR. CUELLAR	X			MR. SCHOCK			
MR. HODES	X						
MR. MURPHY (CT)	X						
MR. WELCH							
MR. FOSTER	X						
MS. SPEIER							
MR. DRIEHAUS	X						
VACANCY							
VACANCY							
VACANCY							

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to terms and conditions of employment or access to public services and accommodations.

H.R. 1320 strengthens requirements for federal advisory committees in the executive branch under the Federal Advisory Committee Act. This bill does not relate to employment or access to public services and accommodations in the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report, including the need to close loopholes created by the courts in interpreting the Federal Advisory Committee Act and the need to increase accountability and transparency in federal advisory committees.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report, including strengthening the Federal Advisory Committee Act and closing loopholes that have been created in the interpretation of the Act.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1320. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement on whether the provisions of the report include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

H.R. 1320 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1320. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1320 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 24, 2009.

Hon. EDOLPHUS TOWNS,
Chairman Committee on Oversight and Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1320, the Federal Advisory Committee Act Amendments of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1320—Federal Advisory Committee Act Amendments of 2009

Summary: H.R. 1320 would amend the Federal Advisory Committee Act (FACA) to require agencies to make more information about FACA activities available to the public, including transcripts of meetings. The legislation also would require additional reports to the Congress by the Government Accountability Office concerning the appointment of advisory committee members.

CBO estimates that implementing H.R. 1320 would cost \$20 million in 2010 and \$120 million over the 2010–2014 period, assuming appropriation of the necessary amounts. Enacting the bill would have no impact on direct spending or revenues. H.R. 1320 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1320 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 contain federal advisory committees.

	By fiscal year, in millions of dollars					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	25	25	25	25	25	125
Estimated Outlays	20	25	25	25	25	120

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2009, that the necessary funds will be provided for each year, and that spending will follow 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 about 900 advisory committees, composed of about 64,000 members, which provide advice and recommendations to 52 departments and agencies. GSA estimates that the total cost to operate those advisory committees during fiscal year 2008 was about \$345 million.

As currently required by FACA, GSA maintains and administers management guidelines for committees. The Office of Government Ethics (OGE) within GSA 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, OGE, and other agencies, most of the provisions of H.R. 1320 would expand the current practices of the federal government regarding the use of advisory committees. Based on information from those sources, CBO expects that implementing the bill would require agencies to prepare additional reports for the Congress, and make transcripts of advisory committee meeting available to the public. Some individual agencies also would need to increase their efforts to investigate Advisory Committee nominees to ensure they have no conflicts of interest. Based on current costs of administering advisory committees, CBO estimates that those activities would increase funding requirements by about \$25 million a year.

Intergovernmental and private-sector impact: H.R. 1320 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ADVISORY COMMITTEE ACT

* * * * *

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) * * *

(2) The term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as “committee”), which is—

(A) * * *

* * * * *

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 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.*

* * * * *

(5) *The term “representative” means an individual who is not a full-time or part-time employee of the Federal Government and who is appointed to an advisory committee to represent the views of an entity or entities outside the Federal Government.*

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

APPLICABILITY; RESTRICTIONS

SEC. 4. [(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(e). In this sub-*

section, the term “subgroup” includes any working group, task force, or other entity formed for the purpose of assisting the committee or any subcommittee of the committee in its work.

* * * * *

(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 part-time officers or employees of the Federal Government for purposes of determining the applicability of this Act under section 3(2).

* * * * *

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

SEC. 7. (a) * * *

* * * * *

(c) *The Administrator shall promulgate regulations as necessary to implement this Act.* The Administrator shall 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.

* * * * *

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

SEC. 9. (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) *CONFLICTS OF INTEREST DISCLOSURE.*—

(1)(A) *The head of each agency shall ensure that no individual appointed to serve on an advisory committee that reports to the agency has a conflict of interest that is relevant to the functions to be performed by the advisory committee, unless the head of the agency determines that the need for the individual’s services outweighs the potential impacts of the conflict of interest.*

(B) If the head of the agency makes such a determination with respect to an individual, nothing in this subsection is intended to preclude the head of the agency from requiring the recusal of the individual from particular aspects of the committee's work.

(C) In the case of an individual appointed as a representative, the fact that an individual is associated with the entity whose views are being represented by the individual shall not itself be considered a conflict of interest by the agency.

(2) The head of each agency shall require—

(A) that each individual the agency appoints or intends to appoint to serve on an advisory committee as a representative inform the agency official responsible for appointing the individual in writing of any actual or potential conflict of interest—

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

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

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

(3) Nothing in this subsection is intended to alter any requirement or obligation for a special Government employee under the Ethics in Government Act (5 U.S.C. App.) or other applicable ethics law, including any requirement to file a financial disclosure report. The head of each agency shall require that each individual the agency appoints as a special Government employee inform the agency in writing of any conflict that exists before appointment or that arises while the individual is serving on the committee to the extent any financial disclosure required by the Ethics in Government Act (5 U.S.C. App.) or other applicable law would not uncover the conflict of interest as such term is defined in regulations promulgated by the Office of Government Ethics to carry out this subsection.

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

[(b)] *(d) 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)] *(e) 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] (1) with the Administrator and (2) with the head of the agency to whom any advisory committee reports and with 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:

(A) * * *

* * * * *

(I) the committee's termination date, if less than two years from the date of the committee's establishment; **[and]**

(J) the date the charter is filed**[.];**

(K) *the authority under which the committee is established;*

(L) *the estimated number of members and a description of the expertise needed to carry out the objectives of the committee;*

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

(N) *whether the committee has the authority to create subcommittees and if so, the agency official authorized to exercise such authority.*

* * * * *

[AVAILABILITY OF TRANSCRIPTS; AGENCY PROCEEDING

[SEC. 11.**]**

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) *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) *The reason the member was appointed to the committee.*

(C) *Whether the member is designated as a special government employee or a representative.*

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

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

(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 summary description of the conflict necessitating the certification, and the reason for granting the certification.*

(5) *A summary of the process used by the advisory committee for making decisions.*

(6) *Transcripts or audio or video recordings of all meetings of the committee.*

(7) *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.*

(8) *Notices of future meetings of the committee.*

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

(b) MANNER OF DISCLOSURE.—

(1) *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 internet site of the agency 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, 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.*

(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.*

(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.*

[(a)] (d) AVAILABILITY OF PAPER COPIES OF TRANSCRIPTS.—*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, paper copies of transcripts of agency proceedings or advisory committee meetings.*

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

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