113TH CONGRESS
1ST SESSION

H.R. 1104

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

IN THE HOUSE OF REPRESENTATIVES

Mr. Clay introduced the following bill; which was referred to the Committee on

A BILL

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

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

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

(a) SHORT TITLE.—This Act may be cited as the “Federal Advisory Committee Act Amendments of 2013”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Ensuring independent advice and expertise.
SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.

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

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

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

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

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

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

"(6) The head of each agency shall, to the ex-
tent 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 mem-
bers.”.

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

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

(1) in section 8—

(A) in the section heading, by inserting

“INDEPENDENT ADVICE AND RECOMMENDA-
TIONS;” after “RESPONSIBILITIES OF AGENCY HEADS;”

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

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

“(b) The head of each agency shall ensure that advice and recommendations of an advisory committee that reports to the agency are the result of the advisory committee’s judgment, independent from the agency. Each advisory committee shall include a statement describing the process used by the advisory committee in formulating the advice and recommendations when they are transmitted to the agency.”; and

(2) in section 10—

(A) in the section heading, by inserting “; CHAIR” after “ATTENDANCE”; and

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

“(g) The Chair shall not be an employee of the agency to which the advisory committee reports, unless directed to chair a meeting by the head of the agency.”.
SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FEDERAL ADVISORY COMMITTEE ACT AND PUBLIC DISCLOSURE.

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

"(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."

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

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

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cludes 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.”.

(c) COMMITTEES CREATED UNDER CONTRACT.—
Section 3(2) of the Federal Advisory Committee Act (5
U.S.C. App.) is amended in the matter following subpara-
graph (C) by adding at the end the following: “An advi-
sory committee is considered to be established by an agen-
cy, 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.”.

(d) ADVISORY COMMITTEES CONTAINING SPECIAL
GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-
visory Committee Act (5 U.S.C. App.), as amended by
subsections (a) and (b) of this section, is further amended
by adding at the end the following new subsection:

“(e) SPECIAL GOVERNMENT EMPLOYEES.—Com-
mittee members appointed as special Government employ-
ees shall not be considered full-time or permanent part-
time officers or employees of the Federal Government for
purposes of determining the applicability of this Act under
section 3(2).”.
SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COMMITTEES.

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

“SEC. 11. DISCLOSURE OF INFORMATION.

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

“(1) The charter of the advisory committee.

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

“(A) The process for identifying prospective members.

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

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

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

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

“(A) The name of any person or entity that nominated the member.
"(B) Whether the member is 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.”.

(b) Charter Filing.—Subsection (f) of section 9 of the Federal Advisory Committee Act (5 U.S.C. App.), as
redesignated by section 2(a), is amended to read as fol-

lows:

"(f) No advisory committee shall meet or take any
action until an advisory committee charter has been filed
with the Administrator, the head of the agency to whom
any advisory committee reports, and the standing commit-
tees of the Senate and of the House of Representatives
having legislative jurisdiction of such agency. Such charter
shall contain the following information in the following
order:

"(1) The committee's official designation.

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

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

"(4) A description of the duties for which the
committee is responsible, and, if such duties are not
solely advisory, a specification of the authority for
such functions.

"(5) The agency or official to whom the com-
mittee 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 two 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 dollars and full-time equivalent positions for such committee.

“(15) The recordkeeping requirements of the committee.

“(16) The date the charter is filed.
A copy of any such charter shall also be furnished to the Library of Congress.”.

SEC. 5. MANAGING FEDERAL ADVISORY COMMITTEES.

(a) COMMITTEE MANAGEMENT OFFICERS.—Subsection (c) of section 8 of the Federal Advisory Committee Act (5 U.S.C. App.), as redesignated by section 2(d), is amended to read as follows:

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

“(1) be a senior official who is—

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

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

“(2) 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, and other papers described in paragraph (3).”.

SEC. 6. COMPTROLLER GENERAL REVIEW AND REPORTS.

(a) REVIEW.—The Comptroller General of the United States shall review compliance by agencies with the Federal Advisory Committee Act, as amended by this Act, including whether agencies are appropriately appointing advisory committee members as either special Government employees or representatives.

(b) REPORT.—The Comptroller General shall submit to the committees described in subsection (c) two reports on the results of the review, as follows:
(1) The first report shall be submitted not later than one year after the date of promulgation of regulations under section 7(c) of the Federal Advisory Committee Act (5 U.S.C. App.), as amended by section 2(c).

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

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

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

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

SEC. 8. DEFINITIONS.

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

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

SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.

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

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

(2) in subparagraph (C)(i), by striking “handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794))” and inserting “individuals with disabilities (as defined in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20)))”.

SEC. 10. EFFECTIVE DATE.

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