

HR 5687 IH

110th CONGRESS
2d Session
H. R. 5687

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

IN THE HOUSE OF REPRESENTATIVES

April 3, 2008

Mr. CLAY (for himself and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as the 'Federal Advisory Committee Act Amendments of 2008'.
- (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. 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. Definition.
 - Sec. 7. Effective date.

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 (d) and (e), 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) Conflicts of Interest Disclosure- 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) Conflicts of Interest Disclosure-

“(1) 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 conflict is unavoidable and that the need for the individual's services outweighs the potential impacts of the conflict of interest. The head of each agency shall require that each individual the agency appoints or intends to appoint to serve on an advisory committee inform the agency official responsible for appointing the individual of any actual or potential conflict of interest the individual has that is relevant to the functions to be performed and that, for an individual appointed to serve on an advisory committee, the conflict is publicly disclosed as described in section 11.

“(2) 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 independent judgment. 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.”.

(c) Regulations and Guidance- Not later than 180 days after the date of the enactment of this Act, the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, shall--

(1) promulgate regulations defining conflict of interest and such other regulations as the Administrator finds necessary to carry out and ensure the enforcement of this section; and

(2) issue guidance for agencies and advisory committees on procedures and best practices for ensuring that advisory committees provide independent advice and expertise.

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:

` (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) White House Interagency Advisory Committees- Section 11 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended by adding at the end the following:

` (f) White House Interagency Advisory Committees- Any communication between--

` (1) an interagency committee or task force established by the President or the Vice President or any member or staff acting on behalf of such an interagency committee or task force, and

` (2) any person who is not an officer or employee of the Federal Government,

shall be made available for public inspection and copying. Any portion of a communication that involves a matter described in section 552(b) of title 5, United States Code, or that is subject to a valid constitutionally based privilege against such disclosure, may be withheld from public disclosure.'

(c) 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(e). In this subsection, 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) Committees Created Under Contract- Section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.) is amended in the matter following subparagraph (C) by adding at the end the following: `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.'

(e) Advisory Committees Containing Special Government Employees- Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is further amended by adding at the end the following new subsection:

` (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).'

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--

(1) by amending the section heading to read as follows:

` SEC. 11. DISCLOSURE OF INFORMATION.');

(2) by redesignating subsection (a) as subsection (d) and in that subsection--

(A) by inserting the following subsection heading:

` Availability of Paper Copies of Transcripts- ';

(B) by inserting after ` duplication,' the following:

` paper';

(3) by redesignating subsection (b) as subsection (e); and

(4) by inserting before subsection (d), as redesignated by paragraph (2), the following new subsections:

` (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.

(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 2.

(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. 6. DEFINITION.

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. 7. EFFECTIVE DATE.

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