

116TH CONGRESS
1ST SESSION

H. R. 1608

AN ACT

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 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 2019”.

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. Managing Federal advisory committees.
- Sec. 6. Comptroller General review and reports.
- Sec. 7. Application of Federal Advisory Committee Act to trade advisory committees.
- Sec. 8. Definitions.
- Sec. 9. Technical and conforming amendments.
- Sec. 10. Effective date.
- Sec. 11. No additional funds authorized.

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

1 political affiliation or political campaign activity, unless re-
2 quired by Federal statute.”.

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

8 “(c) PUBLIC NOMINATIONS OF COMMITTEE MEM-
9 BERS.—

10 “(1) Before making an appointment to an advi-
11 sory committee, the head of an agency shall—

12 “(A) solicit nominations for potential com-
13 mittee members;

14 “(B) if the head of the agency is required
15 to publish a notice under subsection (a)(2), in-
16 clude in the notice a solicitation for nomina-
17 tions of potential committee members; and

18 “(C) provide in the notice under subpara-
19 graph (B) a mechanism for interested persons
20 to comment through a publicly available website
21 of the agency.

22 “(2) The head of an agency shall consider any
23 comments submitted in accordance with paragraph
24 (1)(C) in appointing the members of an advisory
25 committee.

1 “(3) The head of an agency shall solicit nomi-
2 nations under paragraph (1) not less frequently than
3 once every 2 years.

4 “(4) Notwithstanding paragraph (1), if a va-
5 cancy in an advisory committee occurs before the
6 next scheduled solicitation for nominations under
7 this subsection, an agency may appoint a member
8 from among individuals that were previously nomi-
9 nated to be a member of the advisory committee.

10 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

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

15 “(A) a special Government employee, if the
16 individual is providing advice based on the indi-
17 vidual’s expertise or experience; or

18 “(B) a representative, if the individual is
19 representing the views of an entity or entities
20 outside of the Federal Government.

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

24 “(3) The designated agency ethics official for
25 each agency shall review the members of each advi-

1 sory committee that reports to the agency to deter-
2 mine whether each member’s designation is appro-
3 priate, and to redesignate members if appropriate.
4 The designated agency ethics official shall certify to
5 the head of the agency that such review has been
6 made—

7 “(A) following the initial appointment of
8 members; and

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

12 “(4) The head of each agency shall inform each
13 individual who is not a full-time or permanent part-
14 time officer or employee of the Federal Government
15 appointed to an advisory committee that reports to
16 the agency whether the individual is appointed as a
17 special Government employee or as a representative.
18 The agency head shall provide each committee mem-
19 ber with an explanation of the differences between
20 special Government employees and representatives
21 and a summary of applicable ethics requirements.
22 The agency head, acting through the designated
23 agency ethics official, shall obtain signed and dated
24 written confirmation from each committee member

1 that the member received and reviewed the informa-
2 tion required by this paragraph.

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

7 “(6) The head of each agency shall, to the ex-
8 tent practicable, develop and implement strategies to
9 minimize the need for written determinations under
10 section 208(b)(3) of title 18, United States Code.
11 Strategies may include such efforts as improving
12 outreach efforts to potential committee members and
13 seeking public input on potential committee mem-
14 bers.

15 “(7) Nothing in this subsection shall be con-
16 strued to supersede the inapplicability of this Act
17 with respect to peer review groups appointed under
18 paragraph (16) of section 402(b) of the Public
19 Health Service Act, as described in the flush text
20 following paragraph (25)(B) of such section.”.

21 (c) REGULATIONS IMPLEMENTING FACA.—Section
22 7(c) of the Federal Advisory Committee Act (5 U.S.C.
23 App.) is amended by inserting “promulgate regulations
24 and” after “The Administrator shall”.

1 (d) ENSURING INDEPENDENT ADVICE AND REC-
2 OMMENDATIONS.—The Federal Advisory Committee Act
3 (5 U.S.C. App.) is amended—

4 (1) in section 8—

5 (A) in the section heading, by inserting
6 “**INDEPENDENT ADVICE AND REC-**
7 **COMMENDATIONS;**” after “**RESPONSIBIL-**
8 **ITIES OF AGENCY HEADS;**”;

9 (B) by redesignating subsection (b) as sub-
10 section (c); and

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

13 “(b) The head of each agency shall ensure that the
14 agency does not interfere with the free and independent
15 participation, expression of views, and deliberation by
16 committee members. Each advisory committee shall in-
17 clude a statement describing the process used by the advi-
18 sory committee in formulating the advice and rec-
19 ommendations when they are transmitted to the agency.”;
20 and

21 (2) in section 10—

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

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

1 “(g) The chair shall not be an employee of the agency
2 to which the advisory committee reports, unless—

3 “(1) a statute specifically authorizes selection of
4 such an employee as the chair; or

5 “(2) the head of the agency directs an employee
6 to serve as the chair.”.

7 **SEC. 3. PREVENTING EFFORTS TO CIRCUMVENT THE FED-**
8 **ERAL ADVISORY COMMITTEE ACT AND PUB-**
9 **LIC DISCLOSURE.**

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

13 “(a) **APPLICATION.**—The provisions of this Act or of
14 any rule, order, or regulation promulgated under this Act
15 shall apply to each advisory committee, including any sub-
16 committee or subgroup thereof, except to the extent that
17 any Act of Congress establishing any such advisory com-
18 mittee specifically provides otherwise. Any subcommittee
19 or subgroup that reports to a parent committee estab-
20 lished under section 9(a) is not required to comply with
21 section 9(f).”.

22 (b) **COMMITTEES CREATED UNDER CONTRACT.**—
23 Section 3(2) of the Federal Advisory Committee Act (5
24 U.S.C. App.) is amended in the matter following subpara-
25 graph (C) by adding at the end the following: “An advi-

1 sory committee is considered to be established by an agen-
2 cy, agencies, or the President if it is formed, created, or
3 organized under contract, other transactional authority,
4 cooperative agreement, grant, or otherwise at the request
5 or direction of an agency, agencies, or the President.”.

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

11 “(d) **SPECIAL GOVERNMENT EMPLOYEES.**—Com-
12 mittee members appointed as special Government employ-
13 ees shall not be considered full-time or permanent part-
14 time officers or employees of the Federal Government for
15 purposes of determining the applicability of this Act under
16 section 3(2).”.

17 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
18 **MITTEES.**

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

22 **“SEC. 11. DISCLOSURE OF INFORMATION.**

23 “(a) **IN GENERAL.**—With respect to each advisory
24 committee, the head of the agency to which the advisory

1 committee reports shall make publicly available in accord-
2 ance with subsection (b) the following information:

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

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

7 “(A) The process for identifying prospec-
8 tive members.

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

11 “(C) The reason each member was ap-
12 pointed to the committee.

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

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

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

19 “(B) Whether the member is—

20 “(i) designated as a special Govern-
21 ment employee;

22 “(ii) a representative; or

23 “(iii) a full-time or permanent part-
24 time officer or employee of the Federal
25 Government.

1 “(C) In the case of a representative, the
2 individuals or entity whose viewpoint the mem-
3 ber represents.

4 “(4) A list of all members designated as special
5 Government employees for whom written certifi-
6 cations were made under section 208(b) of title 18,
7 United States Code, a copy of each such certifi-
8 cation, a summary description of the conflict necessi-
9 tating the certification, and the reason for granting
10 the certification.

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

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

17 “(7) Detailed minutes of all meetings of the
18 committee and a description of committee efforts to
19 make meetings accessible to the public using online
20 technologies (such as video recordings) or other
21 techniques (such as audio recordings).

22 “(8) Any written determination by the Presi-
23 dent or the head of the agency to which the advisory
24 committee reports, pursuant to section 10(d), to

1 close a meeting or any portion of a meeting and the
2 reasons for such determination.

3 “(9) Notices of future meetings of the com-
4 mittee.

5 “(10) Any additional information considered
6 relevant by the head of the agency to which the advi-
7 sory committee reports.

8 “(b) MANNER OF DISCLOSURE.—

9 “(1) IN GENERAL.—Except as provided in para-
10 graph (2), the head of an agency shall make the in-
11 formation required to be disclosed under subsection
12 (a) available electronically on a publicly available
13 website of the agency and to the Administrator at
14 least 15 calendar days before each meeting of an ad-
15 visory committee. If the head of the agency deter-
16 mines that such timing is not practicable for any re-
17 quired information, such head shall make the infor-
18 mation available as soon as practicable but no later
19 than 48 hours before the next meeting of the com-
20 mittee. An agency may withhold from disclosure any
21 information that would be exempt from disclosure
22 under section 552 of title 5, United States Code.

23 “(2) WEBSITE AVAILABILITY.—The head of an
24 agency shall make available electronically, on a pub-
25 licly available website of the agency, detailed min-

1 utes and, to the extent available, a transcript or
2 audio or video recording of each advisory committee
3 meeting not later than 45 calendar days after such
4 meeting.

5 “(3) GRANT REVIEWS.—In the case of grant re-
6 views, disclosure of information required by sub-
7 section (a)(3) may be provided in the aggregate
8 rather than by individual grant.

9 “(c) PROVISION OF INFORMATION BY ADMINIS-
10 TRATOR OF GENERAL SERVICES.—The Administrator of
11 General Services shall provide, on a publicly available
12 website of the General Services Administration, electronic
13 access to the information made available by each agency
14 under this section.

15 “(d) AVAILABILITY OF MEETING MATERIALS.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graph (2) and where prohibited by contractual
18 agreements entered into prior to the effective date of
19 the Federal Advisory Committee Act Amendments of
20 2019, agencies and advisory committees shall make
21 available to any person, at actual cost of duplication,
22 copies of advisory committee meeting materials.

23 “(2) APPLICABILITY.—Nothing in this sub-
24 section shall be construed to require the disclosure

1 of information that is protected from mandatory dis-
2 closure by statute.”.

3 (b) CHARTER FILING.—Subsection (f) of section 9 of
4 the Federal Advisory Committee Act (5 U.S.C. App.), as
5 redesignated by section 2(a) of this Act, is amended to
6 read as follows:

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

15 “(1) The committee’s official designation.

16 “(2) The authority under which the committee
17 is established.

18 “(3) The committee’s objectives and the scope
19 of its activity.

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

24 “(5) The agency or official to whom the com-
25 mittee reports.

1 “(6) The agency responsible for providing the
2 necessary support for the committee.

3 “(7) The responsibilities of the officer or em-
4 ployee of the Federal Government designated under
5 section 10(e).

6 “(8) The estimated number and frequency of
7 committee meetings.

8 “(9) The period of time necessary for the com-
9 mittee to carry out its purposes.

10 “(10) The committee’s termination date, if less
11 than 2 years from the date of the committee’s estab-
12 lishment.

13 “(11) The estimated number of members and a
14 description of the expertise needed to carry out the
15 objectives of the committee.

16 “(12) A description of whether the committee
17 will be composed of full- or part-time Government
18 employees, special Government employees, represent-
19 atives, or a combination of categories.

20 “(13) Whether the agency intends to create
21 subcommittees and if so, the agency official author-
22 ized to exercise such authority.

23 “(14) The estimated annual operating costs in
24 dollars and full-time equivalent positions for such
25 committee.

1 “(15) The recordkeeping requirements of the
2 committee.

3 “(16) The date the charter is filed.

4 A copy of any such charter shall also be furnished to the
5 Library of Congress.”.

6 **SEC. 5. MANAGING FEDERAL ADVISORY COMMITTEES.**

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

11 “(c) The head of each agency that has an advisory
12 committee shall designate an Advisory Committee Man-
13 agement Officer who shall—

14 “(1) be a senior official who is—

15 “(A) an expert in implementing the re-
16 quirements of this Act and regulations promul-
17 gated pursuant to this Act; and

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

20 “(2) ensure the establishment, management,
21 and supervision of the advisory committees of the
22 agency, including establishing procedures, perform-
23 ance measures, and outcomes for such committees;

24 “(3) ensure the assembly and maintenance of
25 the reports, records, and other papers (including ad-

1 visory committee meeting materials) of any such
2 committee during its existence;

3 “(4) ensure any such committee and cor-
4 responding agency staff adhere to the provisions of
5 this Act and any regulations promulgated pursuant
6 to this Act;

7 “(5) ensure the maintenance of records on each
8 employee of any such committee and completion of
9 training required for any such employee;

10 “(6) be responsible for providing the informa-
11 tion required in section 7(b) of this Act to the Ad-
12 ministrator; and

13 “(7) carry out, on behalf of that agency, the
14 provisions of section 552 of title 5, United States
15 Code, with respect to the reports, records, and other
16 papers described in paragraph (3).”.

17 **SEC. 6. COMPTROLLER GENERAL REVIEW AND REPORTS.**

18 (a) REVIEW.—The Comptroller General of the United
19 States shall review compliance by agencies with the Fed-
20 eral Advisory Committee Act, as amended by this Act, in-
21 cluding whether agencies are appropriately appointing ad-
22 visory committee members who are not full-time or perma-
23 nent part-time officers or employees of the Federal Gov-
24 ernment as either special Government employees or rep-
25 resentatives.

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 1 year after the date of promulgation of regula-
6 tions under section 7(c) of the Federal Advisory
7 Committee Act (5 U.S.C. App.), as amended by sec-
8 tion 2(c).

9 (2) The second report shall be submitted not
10 later than 5 years after such date of promulgation
11 of regulations.

12 (c) COMMITTEES.—The committees described in this
13 subsection are the Committee on Oversight and Reform
14 of the House of Representatives and the Committee on
15 Homeland Security and Governmental Affairs of the Sen-
16 ate.

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

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

1 **SEC. 8. DEFINITIONS.**

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

5 “(5) The term ‘special Government employee’
6 has the meaning given that term in section 202(a)
7 of title 18, United States Code.”.

8 **SEC. 9. TECHNICAL AND CONFORMING AMENDMENTS.**

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

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

15 (2) in subparagraph (C)(i), by striking “handi-
16 capped individuals (within the meaning of section
17 501 of the Rehabilitation Act of 1973 (29 U.S.C.
18 794))” and inserting “individuals with disabilities
19 (as defined in section 7(20) of the Rehabilitation Act
20 of 1973)”.

21 **SEC. 10. EFFECTIVE DATE.**

22 This Act and the amendments made by this Act shall
23 take effect 30 days after the date of the enactment of this
24 Act.

1 **SEC. 11. NO ADDITIONAL FUNDS AUTHORIZED.**

2 No additional funds are authorized to carry out the
3 requirements of this Act and the amendments made by
4 this Act. Such requirements shall be carried out using
5 amounts otherwise authorized.

6 **SEC. 12. DETERMINATION OF BUDGETARY EFFECTS.**

7 The budgetary effects of this Act, for the purpose of
8 complying with the Statutory Pay-As-You-Go Act of 2010,
9 shall be determined by reference to the latest statement
10 titled “Budgetary Effects of PAYGO Legislation” for this
11 Act, submitted for printing in the Congressional Record
12 by the Chairman of the House Budget Committee, pro-
13 vided that such statement has been submitted prior to the
14 vote on passage.

Passed the House of Representatives March 12,
2019.

Attest:

Clerk.

116TH CONGRESS
1ST SESSION

H. R. 1608

AN ACT

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