

Calendar No. 362

115TH CONGRESS
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H. R. 70

[Report No. 115–217]

IN THE SENATE OF THE UNITED STATES

JANUARY 5, 2017

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

MARCH 22, 2018

Reported by Mr. JOHNSON, without amendment

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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Advisory Committee Act Amendments of 2017”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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.

1 SEC. 2. ENSURING INDEPENDENT ADVICE AND EXPERTISE.

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

5 (1) in the section heading, by inserting “MEM-
6 BERSHIP;” after “ADVISORY COMMITTEES;”;

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

9 (3) by inserting after subsection (a) the fol-
10 lowing:

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

16 (b) MINIMIZING CONFLICTS OF INTEREST.—Section
17 9 of the Federal Advisory Committee Act (5 U.S.C. App.),
18 as amended by subsection (a) of this section, is further
19 amended by inserting after subsection (b) (as added by
20 such subsection (a)) the following:

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

11 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

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

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

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

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

1 “(3) The designated agency ethics official for
2 each agency shall review the members of each advisory
3 committee that reports to the agency to determine whether each member’s designation is appropriate, 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

8 “(A) following the initial appointment of
9 members; and
10

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

14 “(4) The head of each agency shall inform each
15 individual appointed to an advisory committee that
16 reports to the agency whether the individual is appointed as a special Government employee or as a representative. The agency head shall provide each
17 committee member with an explanation of the differences between special Government employees and
18 representatives and a summary of applicable ethics
19 requirements. The agency head, acting through the
20 designated agency ethics official, shall obtain signed
21 and dated written confirmation from each committee
22
23
24

1 member that the member received and reviewed the
2 information 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 (c) REGULATIONS IMPLEMENTING FACA.—Section
16 7(c) of the Federal Advisory Committee Act (5 U.S.C.
17 App.) is amended by inserting “promulgate regulations
18 and” after “The Administrator shall”.

19 (d) ENSURING INDEPENDENT ADVICE AND REC-
20 OMMENDATIONS.—The Federal Advisory Committee Act
21 (5 U.S.C. App.) is amended—

22 (1) in section 8—

23 (A) in the section heading, by inserting
24 “INDEPENDENT ADVICE AND RECOMMENDA-

1 TIONS;” after “RESPONSIBILITIES OF AGENCY
2 HEADS;”;

3 (B) by redesignating subsection (b) as sub-
4 section (c); and

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

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

15 (2) in section 10—

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

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

20 “(g) The Chair shall not be an employee of the agen-
21 cy to which the advisory committee reports, unless—

22 “(1) a statute specifically authorizes selection of
23 such an employee as the Chair; or

24 “(2) the head of the agency directs an employee
25 to serve as the Chair.”.

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 new subsection:

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 participates in committee meetings
12 as if the individual were a member, even if the individual
13 does not have the right to vote or veto the advice or rec-
14 ommendations of the advisory committee.”.

15 (b) SUBCOMMITTEES.—Section 4 of the Federal Ad-
16 visory Committee Act (5 U.S.C. App.), as amended by
17 subsection (a) of this section, is further amended by strik-
18 ing subsection (a) and inserting the following:

19 “(a) APPLICATION.—The provisions of this Act or of
20 any rule, order, or regulation promulgated under this Act
21 shall apply to each advisory committee, including any sub-
22 committee or subgroup thereof, except to the extent that
23 any Act of Congress establishing any such advisory com-
24 mittee specifically provides otherwise. Any subcommittee
25 or subgroup that reports to a parent committee estab-

lished under section 9(a) is not required to comply with
section 9(f).”.

(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).”.

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 to read as follows:

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

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

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

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

15 “(A) The process for identifying prospec-
16 tive members.

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

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

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

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

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

1 “(B) Whether the member is designated as
2 a special Government employee or a representa-
3 tive.

4 “(C) In the case of a representative, the
5 individuals or entity whose viewpoint the mem-
6 ber represents.

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

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

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

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

1 “(8) Any written determination by the Presi-
2 dent or the head of the agency to which the advisory
3 committee reports, pursuant to section 10(d), to
4 close a meeting or any portion of a meeting and the
5 reasons for such determination.

6 “(9) Notices of future meetings of the com-
7 mittee.

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

11 “(b) MANNER OF DISCLOSURE.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), the head of an agency shall make the in-
14 formation required to be disclosed under this section
15 available electronically on the official public website
16 of the agency and to the Administrator at least 15
17 calendar days before each meeting of an advisory
18 committee. If the head of the agency determines that
19 such timing is not practicable for any required infor-
20 mation, such head shall make the information avail-
21 able as soon as practicable but no later than 48
22 hours before the next meeting of the committee. An
23 agency may withhold from disclosure any informa-
24 tion that would be exempt from disclosure under sec-
25 tion 552 of title 5, United States Code.

1 “(2) WEBSITE AVAILABILITY.—The head of an
2 agency shall make available electronically, on the of-
3 ficial public website of the agency, detailed minutes
4 and, to the extent available, a transcript or audio or
5 video recording of each advisory committee meeting
6 not later than 30 calendar days after such meeting.

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

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

17 “(d) AVAILABILITY OF MEETING MATERIALS.—Ex-
18 cept where prohibited by contractual agreements entered
19 into prior to the effective date of this Act, agencies and
20 advisory committees shall make available to any person,
21 at actual cost of duplication, copies of advisory committee
22 meeting materials.”.

23 (b) CHARTER FILING.—Subsection (f) of section 9 of
24 the Federal Advisory Committee Act (5 U.S.C. App.), as

1 redesignated by section 2(a) of this Act, is amended to
2 read as follows:

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

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

12 “(2) The authority under which the committee
13 is established.

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

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

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

22 “(6) The agency responsible for providing the
23 necessary support for the committee.

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

4 “(8) The estimated number and frequency of
5 committee meetings.

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

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

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

14 “(12) A description of whether the committee
15 will be composed of special Government employees,
16 representatives, or members from both categories.

17 “(13) Whether the agency intends to create
18 subcommittees and if so, the agency official author-
19 ized to exercise such authority.

20 “(14) The estimated annual operating costs in
21 dollars and full-time equivalent positions for such
22 committee.

23 “(15) The recordkeeping requirements of the
24 committee.

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

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

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

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

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

11 “(1) be a senior official who is—

12 “(A) an expert in implementing the re-
13 quirements of this Act and regulations promul-
14 gated pursuant to this Act; and

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

17 “(2) be responsible for the establishment, man-
18 agement, and supervision of the advisory committees
19 of the agency, including establishing procedures, per-
20 formance measures, and outcomes for such commit-
21 tees;

22 “(3) assemble and maintain the reports,
23 records, and other papers (including advisory com-
24 mittee meeting materials) of any such committee
25 during its existence;

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

5 “(5) maintain records on each employee of any
6 such committee and completion of training required
7 for any such employee;

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

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

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

16 (a) REVIEW.—The Comptroller General of the United
17 States shall review compliance by agencies with the Fed-
18 eral Advisory Committee Act, as amended by this Act, in-
19 cluding whether agencies are appropriately appointing ad-
20 visory committee members as either special Government
21 employees or representatives.

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

1 (1) The first report shall be submitted not later
 2 than 1 year after the date of promulgation of regula-
 3 tions under section 7(c) of the Federal Advisory
 4 Committee Act (5 U.S.C. App.), as amended by sec-
 5 tion 2(c).

6 (2) The second report shall be submitted not
 7 later than 5 years after such date of promulgation
 8 of regulations.

9 (c) COMMITTEES.—The committees described in this
 10 subsection are the Committee on Oversight and Govern-
 11 ment Reform of the House of Representatives and the
 12 Committee on Homeland Security and Governmental Af-
 13 fairs of the Senate.

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

16 Section 135(f)(2)(A) of the Trade Act of 1974 (19
 17 U.S.C. 2155(f)(2)(A)) is amended by striking “sub-
 18 sections (a) and (b) of sections 10 and 11 of the Federal
 19 Advisory Committee Act” and inserting “subsections (a)
 20 and (b) of section 10 and subsections (a)(7), (a)(8),
 21 (a)(9), (b)(2), and (d) of section 11 of the Federal Advi-
 22 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 (29 U.S.C. 705(20)))”.

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

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

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

25 No additional funds are authorized to carry out the
26 requirements of this Act and the amendments made by

1 this Act. Such requirements shall be carried out using
2 amounts otherwise authorized.

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