

116TH CONGRESS  
1ST SESSION

# H. R. 1608

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IN THE SENATE OF THE UNITED STATES

MARCH 13, 2019

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

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## 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.

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

Passed the House of Representatives March 12, 2019.

**HR 1608 RFS**