

117TH CONGRESS
1ST SESSION

S. 790

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

IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, MARCH 16), 2021

Mr. PORTMAN (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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 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 Transparency Act”.

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.
- Sec. 12. Determination of budgetary effects.

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 campaign activity, unless re-
 15 quired by 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.—

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

5 “(A) solicit nominations for potential com-
6 mittee members;

7 “(B) if the head of the agency is required
8 to publish a notice under subsection (a)(2), in-
9 clude in the notice a solicitation for nomina-
10 tions of potential committee members; and

11 “(C) provide in the notice under subpara-
12 graph (B) a mechanism for interested persons
13 to comment through a publicly available website
14 of the agency.

15 “(2) The head of an agency shall consider any
16 comments submitted in accordance with paragraph
17 (1)(C) in appointing the members of an advisory
18 committee.

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

22 “(4) Notwithstanding paragraph (1), if a va-
23 cancy in an advisory committee occurs before the
24 next scheduled solicitation for nominations under
25 this subsection, an agency may appoint a member

1 from among individuals that were previously nomi-
2 nated to be a member of the advisory committee.

3 “(d) DESIGNATION OF COMMITTEE MEMBERS.—

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

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

11 “(B) a representative, if the individual is
12 representing the views of an entity or entities
13 outside of the Federal Government.

14 “(2) An agency may not designate committee
15 members as representatives to avoid subjecting them
16 to Federal ethics rules and requirements.

17 “(3) The designated agency ethics official for
18 each agency shall review the members of each advi-
19 sory committee that reports to the agency to deter-
20 mine whether each member’s designation is appro-
21 priate, and to redesignate members if appropriate.
22 The designated agency ethics official shall certify to
23 the head of the agency that such review has been
24 made—

1 “(A) following the initial appointment of
2 members; and

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

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

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

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

9 “(7) Nothing in this subsection shall be con-
 10 strued to supersede the inapplicability of this Act
 11 with respect to peer review groups appointed under
 12 paragraph (16) of section 402(b) of the Public
 13 Health Service Act (42 U.S.C. 282(b)), as described
 14 in the flush text following paragraph (25)(B) of such
 15 section.”.

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

20 (d) ENSURING INDEPENDENT ADVICE AND REC-
 21 OMMENDATIONS.—The Federal Advisory Committee Act
 22 (5 U.S.C. App.) is amended—

23 (1) in section 8—

24 (A) in the section heading, by inserting

25 **“INDEPENDENT ADVICE AND REC-**

1 **COMMENDATIONS;”** after “**RESPONSIBIL-**
 2 **ITIES OF AGENCY 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 agency
 21 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) SUBCOMMITTEES.—Section 4 of the Federal Ad-
 5 visory Committee Act (5 U.S.C. App.) is amended by
 6 striking subsection (a) and inserting the following:

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

16 (b) COMMITTEES CREATED UNDER CONTRACT.—
 17 Section 3(2) of the Federal Advisory Committee Act (5
 18 U.S.C. App.) is amended in the matter following subpara-
 19 graph (C) by adding at the end the following: “An advi-
 20 sory committee is considered to be established by an agen-
 21 cy, agencies, or the President if it is formed, created, or
 22 organized under contract, other transactional authority,
 23 cooperative agreement, grant, or otherwise at the request
 24 or direction of an agency, agencies, or the President.”.

25 (c) ADVISORY COMMITTEES CONTAINING SPECIAL
 26 GOVERNMENT EMPLOYEES.—Section 4 of the Federal Ad-

1 visory Committee Act (5 U.S.C. App.) is amended by add-
 2 ing at the end the following new subsection:

3 “(d) SPECIAL GOVERNMENT EMPLOYEES.—Com-
 4 mittee members appointed as special Government employ-
 5 ees shall not be considered full-time or permanent part-
 6 time officers or employees of the Federal Government for
 7 purposes of determining the applicability of this Act under
 8 section 3(2).”.

9 **SEC. 4. INCREASING TRANSPARENCY OF ADVISORY COM-**
 10 **MITTEES.**

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

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

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

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

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

23 “(A) The process for identifying prospec-
 24 tive members.

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

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

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

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

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

11 “(B) Whether the member is—

12 “(i) designated as a special Govern-
13 ment employee;

14 “(ii) a representative; or

15 “(iii) a full-time or permanent part-
16 time officer or employee of the Federal
17 Government.

18 “(C) In the case of a representative, the
19 individuals or entity whose viewpoint the mem-
20 ber represents.

21 “(4) A list of all members designated as special
22 Government employees for whom written certifi-
23 cations were made under section 208(b) of title 18,
24 United States Code, a copy of each such certifi-
25 cation, a summary description of the conflict necessi-

1 tating the certification, and the reason for granting
2 the certification.

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

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

9 “(7) Detailed minutes of all meetings of the
10 committee and a description of committee efforts to
11 make meetings accessible to the public using online
12 technologies (such as video recordings) or other
13 techniques (such as audio recordings).

14 “(8) Any written determination by the Presi-
15 dent or the head of the agency to which the advisory
16 committee reports, pursuant to section 10(d), to
17 close a meeting or any portion of a meeting and the
18 reasons for such determination.

19 “(9) Notices of future meetings of the com-
20 mittee.

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

24 “(b) MANNER OF DISCLOSURE.—

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

15 “(2) WEBSITE AVAILABILITY.—The head of an
16 agency shall make available electronically, on a pub-
17 licly available website of the agency, detailed min-
18 utes and, to the extent available, a transcript or
19 audio or video recording of each advisory committee
20 meeting not later than 45 calendar days after such
21 meeting.

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

1 “(c) PROVISION OF INFORMATION BY ADMINIS-
 2 TRATOR OF GENERAL SERVICES.—The Administrator
 3 shall provide, on a publicly available website of the General
 4 Services Administration, electronic access to the informa-
 5 tion made available by each agency under this section.

6 “(d) AVAILABILITY OF MEETING MATERIALS.—

7 “(1) IN GENERAL.—Except as provided in para-
 8 graph (2) and where prohibited by contractual
 9 agreements entered into prior to the effective date of
 10 the Federal Advisory Committee Transparency Act,
 11 agencies and advisory committees shall make avail-
 12 able to any person, at actual cost of duplication, cop-
 13 ies of advisory committee meeting materials.

14 “(2) APPLICABILITY.—Nothing in this sub-
 15 section shall be construed to require the disclosure
 16 of information that is protected from mandatory dis-
 17 closure by statute.”.

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

22 “(f) No advisory committee shall meet or take any
 23 action until an advisory committee charter has been filed
 24 with the Administrator, the head of the agency to whom
 25 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 em-
ployee 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 com-
mittee to carry out its purposes.

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

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

7 “(12) A description of whether the committee
8 will be composed of full- or part-time Government
9 employees, special Government employees, represent-
10 atives, or a combination of categories.

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

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

17 “(15) The recordkeeping requirements of the
18 committee.

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

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

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

23 (a) COMMITTEE MANAGEMENT OFFICERS.—Sub-
24 section (c) of section 8 of the Federal Advisory Committee

1 Act (5 U.S.C. App.), as redesignated by section 2(d) of
2 this Act, is amended to read as follows:

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

6 “(1) be a senior official who is—

7 “(A) an expert in implementing the re-
8 quirements of this Act and regulations promul-
9 gated pursuant to this Act; and

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

12 “(2) ensure the establishment, management,
13 and supervision of the advisory committees of the
14 agency, including establishing procedures, perform-
15 ance measures, and outcomes for such committees;

16 “(3) ensure the assembly and maintenance of
17 the reports, records, and other papers (including ad-
18 visory committee meeting materials) of any such
19 committee during its existence;

20 “(4) ensure any such committee and cor-
21 responding agency staff adhere to the provisions of
22 this Act and any regulations promulgated pursuant
23 to this Act;

1 “(5) ensure the maintenance of records on each
2 employee of any such committee and completion of
3 training required for any such employee;

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

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

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

12 (a) REVIEW.—The Comptroller General of the United
13 States shall review compliance by agencies with the Fed-
14 eral Advisory Committee Act (5 U.S.C. App.), as amended
15 by this Act, including whether agencies are appropriately
16 appointing advisory committee members who are not full-
17 time or permanent part-time officers or employees of the
18 Federal Government as either special Government employ-
19 ees or representatives.

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

23 (1) The first report shall be submitted not later
24 than 1 year after the date of promulgation of regula-
25 tions under section 7(c) of the Federal Advisory

1 Committee Act (5 U.S.C. App.), as amended by sec-
 2 tion 2(c).

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

6 (c) COMMITTEES.—The committees described in this
 7 subsection are the Committee on Oversight and Reform
 8 of the House of Representatives and the Committee on
 9 Homeland Security and Governmental Affairs of the Sen-
 10 ate.

11 **SEC. 7. APPLICATION OF FEDERAL ADVISORY COMMITTEE**

12 **ACT TO TRADE ADVISORY COMMITTEES.**

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

20 **SEC. 8. DEFINITIONS.**

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

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

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

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

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

11 (2) in subparagraph (C)(i), by striking “handi-
12 capped individuals (within the meaning of section
13 501 of the Rehabilitation Act of 1973 (29 U.S.C.
14 794))” and inserting “individuals with disabilities
15 (as defined in section 7(20) of the Rehabilitation Act
16 of 1973 (29 U.S.C. 705(20))”.

17 **SEC. 10. EFFECTIVE DATE.**

18 This Act and the amendments made by this Act shall
19 take effect 30 days after the date of the enactment of this
20 Act.

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

22 No additional funds are authorized to carry out the
23 requirements of this Act and the amendments made by
24 this Act. Such requirements shall be carried out using
25 amounts otherwise authorized.

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

2 The budgetary effects of this Act, for the purpose of
3 complying with the Statutory Pay-As-You-Go Act of 2010
4 (2 U.S.C. 931 et seq.), shall be determined by reference
5 to the latest statement titled “Budgetary Effects of
6 PAYGO Legislation” for this Act, submitted for printing
7 in the Congressional Record by the Chairman of the
8 House Budget Committee, provided that such statement
9 has been submitted prior to the vote on passage.

○