

FEDERAL ADVISORY COMMITTEE ACT AMENDMENTS OF
2015

JANUARY 5, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. CHAFFETZ, from the Committee on Oversight and Government
Reform, submitted the following

R E P O R T

[To accompany H.R. 2347]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom
was referred the bill (H.R. 2347) to amend the Federal Advisory
Committee Act to increase the transparency of Federal advisory
committees, and for other purposes, having considered the same,
report favorably thereon without amendment and recommend that
the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 2347, the Federal Advisory Committee Act Amendments of 2015, would amend the Federal Advisory Committee Act (FACA) to improve the transparency and accountability of federal advisory committees. The bill would ensure advisory committee members are selected without regard to political affiliation, require agencies to give those interested the opportunity to suggest potential members, and require members serving as individual experts to fully disclose conflicts of interests and apply the law to subcommittees and committees created by contract. It would also require each agency head to make information about advisory committees available on the agency's website.

BACKGROUND AND NEED FOR LEGISLATION

The Federal Advisory Committee Act, enacted on October 6, 1972, formalized the process for establishing, operating, overseeing, and terminating federal advisory committees.¹ The legislation followed the then-House Committee on Government Operations' evaluation of the use of advisory committees by the federal government.² FACA ensures federal advisory committees are transparent and accessible. These committees provide advice, hold meetings, and produce records to federal government agencies. FACA ensures all committee meetings are objective, records are available to the public, and membership is balanced in viewpoints and functions.

Federal advisory committees provide a mechanism for government officials to gain knowledge from federal and non-federal experts on policy matters. FACA was enacted in response to concerns that federal advisory committees were becoming increasingly common but had little oversight or accountability.³ FACA formalized a governance process for these advisory bodies and established the Committee Management Secretariat within the General Services Administration (GSA) to monitor compliance with the new law. The intent of FACA was to make federal advisory committees more accountable, transparent, balanced, and independent from the influence of special interests.⁴

In 2004, the U.S. Government Accountability Office (GAO) concluded that additional government-wide guidance could help ensure federal advisory committee members are independent and balanced in terms of viewpoints.⁵ In testimony before the then-Subcommittee on Information Policy, Census, and National Archives, Robin M. Nazzaro, Director of Natural Resources and Environment at GAO, recommended the Subcommittee consider amendments to FACA to: (1) help prevent inappropriate use of representative appointments; (2) better ensure the independence of committee members by clarifying the nature of advice to be provided by members of advisory committees; and (3) require that all committee members, not just

¹ Pub. L. No. 92-463.

² H.R. Rep. No. 92-1017.

³ Wendy Ginsberg, Cong. Research Serv., R40520, Federal Advisory Committees: An Overview (2009).

⁴ *Id.*

⁵ U.S. Gov't Accountability Office, GAO-04-328, Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance (2004).

special government employees, be provided ethics training.⁶ In addition, GAO suggested the Subcommittee incorporate into FACA the substance of its 2004 recommendations to provide greater assurance that committees are perceived as being independent and balanced in terms of viewpoints.⁷

In FY2014, the federal government had more than 1,050 active advisory committees at a cost of \$340 million to the taxpayer.⁸ The Administrative Conference of the United States, in its 2011 recommendation, stated that numerous private groups have argued the 1972 Act “does not adequately promote transparency or preserve a role for the public to participate in the work of committees.”⁹ Federal advisory committee meetings are open, closed, or partially closed.¹⁰ The number of *open* meetings has been in steady decline, going from 1,933 in FY2012 (27.6 percent of total meetings) to 1,647 in FY2014 (23.0 percent of total meetings).¹¹ At the same time, the number of *closed* meetings increased from 4,641 in FY2012 (66.3 percent of total meetings) to 5,091 in FY2014 (71.1 percent of total meetings).¹²

Accordingly, H.R. 2347 includes a number of provisions to help further the independence of advisory committees by requiring members to be selected without regard to political affiliation and by ensuring the advice and recommendations of committees is free from agency interference. The bill would improve the transparency of advisory committees by requiring agency heads to obtain conflict of interest disclosures from committee members serving as individual experts and by closing the loophole that allows subcommittees to operate outside of the requirements of FACA. H.R. 2347 would improve the accountability of advisory committees by clarifying that committees established by contractors must comply with FACA and that individuals who regularly attend and participate in committee meetings as if they are members are considered members even if they are not allowed to vote. The bill would also require GAO to review and to report on agency compliance with FACA.

LEGISLATIVE HISTORY

On April 3, 2008, Representative William Lacy Clay (D–MO) introduced H.R. 5687, the Federal Advisory Committee Act Amendments of 2008, and the bill was referred to the Committee on Oversight and Government Reform. The Committee reported the legislation favorably on April 9, 2008. H.R. 5687 was passed by the House on June 24, 2008 and referred to the Senate Committee on Homeland Security and Governmental Affairs. No further action was taken.

On March 5, 2009, Representative Clay reintroduced H.R. 1320, the Federal Advisory Committee Act Amendments of 2009, and the

⁶U.S. Gov’t Accountability Office, GAO–08–611T, Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees (2008).

⁷*Id.*

⁸U.S. Gen. Ser. Admin., “FACA Database” at <https://database.faca.gov/rpt/rptq05.asp> (accessed Dec. 8, 2015).

⁹U.S. Admin. Conference, R2011–7, The Federal Advisory Committee Act—Issues and Proposed Reforms (2011).

¹⁰Wendy Ginsberg, Cong. Research Serv., R44248, The Federal Advisory Committee Act: Analysis of Operations and Costs (2015).

¹¹*Id.*

¹²*Id.*

bill was referred to the Committee on Oversight and Government Reform. The Committee reported the legislation favorably on June 4, 2009. On July 26, 2010, H.R. 1320 was passed by the House by a 250–124 vote. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. No further action was taken.

On October 6, 2011, Representative Clay reintroduced H.R. 3124, the Federal Advisory Committee Act Amendments of 2011. The bill was referred to the Committee on Oversight and Government Reform and the Committee on Ways and Means. No further action was taken.

On March 13, 2013, Representative Clay reintroduced H.R. 1104, the Federal Advisory Committee Act Amendments of 2013. The bill was referred to the Committees on Oversight and Government Reform and Ways and Means. The Committee on Oversight and Government Reform ordered the bill reported favorably by voice vote on March 20, 2013. No further action was taken.

On May 15, 2015, Representative Clay reintroduced H.R. 2347, the Federal Advisory Committee Act Amendments of 2015. The bill was referred to the Committees on Oversight and Government Reform and Ways and Means. On October 9, 2015, the Committee on Oversight and Government Reform ordered the bill reported favorably by unanimous consent.

SECTION-BY-SECTION

Section 1. Short title; table of contents

Designates the short title of the bill as the “Federal Advisory Committee Act Amendments of 2015.”

Section 2. Ensuring independent advice and expertise

Requires appointments to advisory committees be made without regard to political affiliation or political activity, unless required by federal statute.

Requires agencies publish a request for comments regarding potential committee members in the *Federal Register* and provide opportunity to submit comments online. Agency heads must consider submitted comments before appointing members.

Designates non-federal employee committee members as: (1) a “special Government employee” if appointed to provide expert advice, or (2) a “representative” if appointed to represent views of an entity or entities outside the federal government. Prohibits agencies from designating committee members as representatives to avoid federal ethics rules.

Requires an agency ethics official to review designations of advisory committee members.

Requires agencies to explain the difference between designations, including differences in ethics requirements, and notify each member of their own designation. Committee members must sign a confirmation of receipt of information.

Encourages agencies to develop strategies to increase the pool of potential committee members in order to reduce the number of members requiring conflict of interest waivers.

Provides the GSA authority to promulgate regulations to implement the Act.

Prohibits agencies from interfering with free participation and deliberation by committee members. In reports submitted to the agency, committees must include a description of the process used to formulate recommendations or conclusions.

Prohibits an employee of the agency to which the committee reports from serving as Chair, unless a statute or agency head authorizes such an employee serve as Chair.

Section 3. Preventing efforts to circumvent the Federal Advisory Committee Act and public disclosure

Clarifies that participants who regularly attend and participate in committee meetings as if they were a member are considered committee members, even if not allowed to vote.

Requires subcommittees of advisory committees comply with FACA, but they would not need to file a separate charter if they report to a parent committee.

Clarifies that advisory committees established under contract, other transactional authority, or otherwise at the request or direction of an agency or the President are subject to FACA.

Clarifies that advisory committees that include members appointed as special Government employees are subject to the requirements of FACA.

Section 4. Increasing transparency of advisory committees

Requires agencies to make publicly available for each advisory committee: the charter; the member selection process; a list of members, including designations as representatives or special Government employees; any conflict of interest; committee processes; and detailed meeting minutes. The information must be made available on the agency's as well as GSA's website.

Enhances the disclosure requirements for advisory committee charters.

Section 5. Managing federal advisory committees

Requires a senior official to be appointed as the agency's Advisory Committee Management Officer to be responsible for managing the agency's advisory committee process.

Section 6. Comptroller General review and reports

Requires GAO to report to Congress on agency compliance with FACA, including whether agencies are appropriately appointing advisory committee members as either special Government employees or representatives.

Section 7. Application of Federal Advisory Committee Act to Trade Advisory Committees

Updates exemptions for advisory committees in the Trade Act of 1974.

Section 8. Definitions

Adopts the definition of "special Government employee" from 18 U.S.C. 202(a), which provides that such person is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties for no more than 130 days a year.

Section 9. Technical and conforming amendments

Makes technical amendments to section 7(d)(1) of FACA.

Section 10. Effective date

States that the bill will take effect 30 days after the date of the enactment of this Act.

EXPLANATION OF AMENDMENTS

No amendments were offered during Full Committee consideration of the bill.

COMMITTEE CONSIDERATION

On October 9, 2015, the Committee met in open session and reported favorably the bill, H.R. 2347, under the terms of a unanimous consent request.

ROLL CALL VOTES

No roll call votes were requested or conducted during Full Committee consideration of the bill.

CORRESPONDENCE

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER**Congress of the United States**
House of RepresentativesCOMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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December 10, 2015

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515

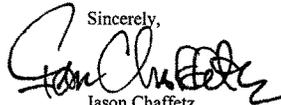
Dear Mr. Chairman:

On October 9, 2015, the Committee on Oversight and Government Reform ordered reported without amendment H.R. 2347, the Federal Advisory Committee Act Amendments of 2015, by unanimous consent. The bill was referred primarily to the Committee on Oversight and Government Reform, with an additional referral to the Committee on Ways and Means.

I ask that you allow the Ways and Means Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Ways and Means represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Oversight and Government Reform, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,


Jason Chaffetz
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Elijah E. Cummings
The Honorable Sander M. Levin
The Honorable Thomas J. Wickham, Parliamentarian

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

December 10, 2015

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

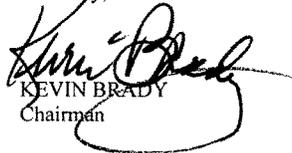
Dear Mr. Chairman:

Thank you for your letter regarding the Committee on Ways and Means' jurisdictional interest in H.R. 2347, the "Federal Advisory Committee Act Amendments of 2015." I wanted to notify you that the Committee on Ways and Means will forgo action on H.R. 2347 so that it may proceed expeditiously to the House floor for consideration.

This is conditional on our mutual understanding and agreement that doing so will in no way diminish or alter the jurisdiction of the Committee on Ways and Means. In addition, the Committee reserves that right to seek conferees and requests your support when such a request is made.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 2347, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during Floor consideration of H.R. 2347.

Sincerely,



KEVIN BRADY
Chairman

cc: The Honorable Paul D. Ryan, Speaker of the House

The Honorable Sander Levin, Ranking Minority Member
Committee on Ways and Means

The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform

Mr. Tom Wickham, Parliamentarian

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends the Federal Advisory Committee Act (5 U.S.C. Appendix) to further committee transparency. As such, it does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to amend the Federal Advisory Committee Act (5 U.S.C. Appendix).

DUPLICATION OF FEDERAL PROGRAMS

No provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting this bill does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

COMMITTEE ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of Congressional Budget Office:

H.R. 2347—Federal Advisory Committee Act Amendments of 2015

Summary: H.R. 2347 would amend the Federal Advisory Committee Act (FACA), which governs the operation of most federal advisory committees, to require agencies to disclose additional information about committee activities to the public. It also would expand the act to cover additional federal committees and would require the Government Accountability Office (GAO) to submit reports to the Congress concerning the appointment of advisory committee members. More than 1,000 advisory committees provide advice and guidance to federal agencies on many subjects ranging from organ donation to the operations of the Department of Homeland Security. Those committees, which may also be called commissions, councils, or task forces, have been created to collect a variety of viewpoints on specific policy issues. They can provide advice or make recommendations to federal agencies.

CBO estimates that implementing H.R. 2347 would cost \$70 million over the 2016–2020 period, assuming appropriation of the necessary amounts. Enacting the bill could affect direct spending by agencies not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2347 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2026.

H.R. 2347 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2347 is shown in the following table. The costs of this legislation fall primarily within budget function 800 (general government) but would affect all budget functions that include funding for federal advisory committees.

	By fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	15	15	15	15	15	75
Estimated Outlays	10	15	15	15	15	70

Basis of estimate: For this estimate, CBO assumes that H.R. 2347 will be enacted early in fiscal year 2016, that the necessary funds will be provided each year, and that spending will follow historical patterns for similar activities.

FACA governs the activities of federal advisory committees. Those committees provide independent advice and recommendations to the federal government. According to the General Services Administration (GSA), there are approximately 1,000 advisory committees with about 70,000 members that provide advice and recommendations to about 50 departments and agencies. GSA estimates that the total cost to manage those advisory committees during fiscal year 2014 was \$334 million.

Under FACA, GSA maintains management guidelines for committees and advises committees on implementing those guidelines. The Office of Government Ethics is responsible for developing regulations and guidance for advisory committee members who serve as special government employees and must meet certain requirements pertaining to conflicts of interest. In addition, FACA requires that the advice provided by the committees be objective and publicly available. Meetings of advisory committees are generally open to the public, with certain specified exceptions. Notice of such meetings must be published in advance; all papers, records, and minutes of meetings must be made available for public inspection, and such information is subject to disclosure under the Freedom of Information Act.

According to GSA and other agencies, H.R. 2347 would impose more-stringent ethics requirements on all advisory committee members. Agencies would have to make more information about such committees available to the public, make establishing a committee and selecting members more transparent, and extend FACA regulations to cover additional advisory committees. Under the bill, GAO would be required to produce two reports over the next five years. Based on the current cost of administering advisory committees and preparing reports, CBO estimates that implementing the bill would increase federal costs by about \$15 million a year or less than \$1 million per major agency.

Pay-as-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. H.R. 2347 could affect direct spending by agencies not funded through annual appropriations. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting the bill would not affect revenues.

Increase in long term direct spending and deficits: CBO estimates that enacting H.R. 2347 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

Intergovernmental and private-sector impact: H.R. 2347 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on state, local, and tribal governments: Jon Sperl; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

FEDERAL ADVISORY COMMITTEE ACT

* * * * *

DEFINITIONS

SEC. 3. For the purpose of this Act—

(1) The term “Administrator” means the Administrator of General Services.

(2) The term “advisory committee” means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as “committee”), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration. *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.*

(3) The term “agency” has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term “Presidential advisory committee” means an advisory committee which advises the President.

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

APPLICABILITY; RESTRICTIONS

SEC. 4. [(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.]

(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(f).*

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency;
- (2) the Federal Reserve System; or

(3) the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of this Act.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

(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.*

(e) *SPECIAL GOVERNMENT EMPLOYEES.*—*Committee members appointed as special Government employees 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).*

* * * * *

RESPONSIBILITIES OF THE ADMINISTRATOR OF GENERAL SERVICES;
COMMITTEE MANAGEMENT SECRETARIAT, ESTABLISHMENT; REVIEW;
RECOMMENDATIONS TO PRESIDENT AND CONGRESS; AGENCY CO-
OPERATION; PERFORMANCE GUIDELINES; UNIFORM PAY GUIDELINES;
TRAVEL EXPENSES; EXPENSE RECOMMENDATIONS

SEC. 7. (a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall *promulgate regulations and* prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of [the rate specified for GS-18 of the General Schedule under section 5332] *the rate for level IV of the Executive Schedule under section 5315* of title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as [handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794))] *individuals with disabilities (as defined in section 7(20) of the Rehabilitation Act of 1973 (29 U.S.C. 705(20))*), and

(ii) who do not otherwise qualify for assistance under section 3102 of title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such title 5), may be provided services pursuant to section 3102 of such title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee, from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS; *INDEPENDENT ADVICE AND RECOMMENDATIONS*; ADVISORY COMMITTEE MANAGEMENT OFFICER, DESIGNATION

SEC. 8. (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency shall ensure that the agency does not interfere with the free and independent participation, expression of views, and deliberation by committee members. Each advisory committee shall include a statement describing the process used by the advisory committee in formulating the advice and recommendations when they are transmitted to the agency.

[(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

[(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

[(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

[(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.]]

(c) The head of each agency that has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) be a senior official who is—

(A) an expert in implementing the requirements of this Act and regulations promulgated pursuant to this Act; and

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

(2) be responsible for the establishment, management, and supervision of the advisory committees of the agency, including establishing procedures, performance measures, and outcomes for such committees;

(3) assemble and maintain the reports, records, and other papers (including advisory committee meeting materials) of any such committee during its existence;

(4) ensure any such committee and corresponding agency staff adhere to the provisions of this Act and any regulations promulgated pursuant to this Act;

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

(6) be responsible for providing the information required in section 7(b) of this Act to the Administrator; and

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

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES; MEMBERSHIP; PUBLICATION IN FEDERAL REGISTER; CHARTER: FILING, CONTENTS, COPY

SEC. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(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.

(c) *PUBLIC NOMINATIONS OF COMMITTEE MEMBERS.*—Prior to appointing members to an advisory committee, the head of an agency shall give interested persons an opportunity to suggest potential committee members. The agency shall include a request for comments in the Federal Register notice required under subsection (a) and provide a mechanism for interested persons to comment through the official website of the agency. The agency shall consider any comments submitted under this subsection in selecting the members of an advisory committee.

(d) *DESIGNATION OF COMMITTEE MEMBERS.*—

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

(A) a special Government employee, if the individual is providing advice based on the individual's expertise or experience; or

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

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

(3) The designated agency ethics official for each agency shall review the members of each advisory committee that reports to the agency to determine whether each member's designation is appropriate, and to redesignate members if appropriate. The designated agency ethics official shall certify to the head of the agency that such review has been made—

(A) following the initial appointment of members; and

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

(4) The head of each agency shall inform each individual appointed to an advisory committee that reports to the agency whether the individual is appointed as a special Government employee or as a representative. The agency head shall provide each committee member with an explanation of the differences between special Government employees and representatives and a summary of applicable ethics requirements. The agency head, acting through the designated agency ethics official, shall obtain signed and dated written confirmation from each committee member that the member received and reviewed the information required by this paragraph.

(5) The Director of the Office of Government Ethics shall provide guidance to agencies on what to include in the summary of ethics requirements required by paragraph (4).

(6) The head of each agency shall, to the extent practicable, develop and implement strategies to minimize the need for written determinations under section 208(b)(3) of title 18, United States Code. Strategies may include such efforts as improving outreach efforts to potential committee members and seeking public input on potential committee members.

[(b)] *(e) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.*

[(c)] *No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:*

[(A)] *the committee's official designation;*

[(B)] *the committee's objectives and the scope of its activity;*

[(C)] *the period of time necessary for the committee to carry out its purposes;*

[(D)] *the agency or official to whom the committee reports;*

[(E)] *the agency responsible for providing the necessary support for the committee;*

[(F)] *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;*

[(G)] *the estimated annual operating costs in dollars and man-years for such committee;*

[(H)] *the estimated number and frequency of committee meetings;*

[(I)] *the committee's termination date, if less than two years from the date of the committee's establishment; and*

[(J)] *the date the charter is filed.*

A copy of any such charter shall also be furnished to the Library of Congress.]

(f) No advisory committee shall meet or take any action until an advisory committee charter has been filed with the Administrator, the head of the agency to whom any advisory committee reports, and the standing committees 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 committee reports.*
- (6) The agency responsible for providing the necessary support for the committee.*
- (7) The responsibilities of the officer or employee 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 committee to carry out its purposes.*
- (10) The committee's termination date, if less than two years from the date of the committee's establishment.*
- (11) The estimated number of members and a description of the expertise needed to carry out the objectives of the committee.*
- (12) A description of whether the committee will be composed of special Government employees, representatives, or members from both categories.*
- (13) Whether the agency intends to create subcommittees and if so, the agency official authorized to exercise such authority.*
- (14) The estimated annual operating costs in dollars and full-time equivalent positions for such committee.*
- (15) The recordkeeping requirements of the committee.*
- (16) The date the charter is filed.*

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

ADVISORY COMMITTEE PROCEDURES; MEETINGS; NOTICE, PUBLICATION IN FEDERAL REGISTER; REGULATIONS; MINUTES; CERTIFICATION; ANNUAL REPORT; FEDERAL OFFICER OR EMPLOYEE, ATTENDANCE; CHAIR

SEC. 10. (a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

(g) *The Chair shall not be an employee of the agency to which the advisory committee reports, unless—*

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

(2) the head of the agency directs an employee to serve as the Chair.

【AVAILABILITY OF TRANSCRIPTS; “AGENCY PROCEEDING”

【SEC. 11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

【(b) As used in this section “agency proceeding” means any proceeding as defined in section 551(12) of title 5, United States Code.】

SEC. 11. DISCLOSURE OF INFORMATION.

(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) *The reason each member was appointed to the committee.*
 - (D) *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) *Whether the member is designated as a special Government employee or a representative.*
 - (C) *In the case of a representative, the individuals or entity whose viewpoint the member represents.*
- (4) *A list of all members designated as special Government employees for whom written certifications were made under section 208(b) of title 18, United States Code, a copy of each such certification, a summary description of the conflict necessitating the certification, and the reason for granting the certification.*
- (5) *Any recusal agreement made by a member or any recusal known to the agency that occurs during the course of a meeting or other work of the committee.*
- (6) *A summary of the process used by the advisory committee for making decisions.*
- (7) *Detailed minutes of all meetings of the committee and a description of committee efforts to make meetings accessible to the public using online technologies (such as video recordings) or other techniques (such as audio recordings).*
- (8) *Any written determination by the President or the head of the agency to which the advisory committee reports, pursuant to section 10(d), to close a meeting or any portion of a meeting and the reasons for such determination.*
- (9) *Notices of future meetings of the committee.*
- (10) *Any additional information considered relevant by the head of the agency to which the advisory committee reports.*

(b) MANNER OF DISCLOSURE.—

- (1) *IN GENERAL.*—Except as provided in paragraph (2), the head of an agency shall make the information required to be disclosed under this section available electronically on the official public website of the agency and to the Administrator at least 15 calendar days before each meeting of an advisory committee. If the head of the agency determines that such timing is not practicable for any required information, such head shall make the information available as soon as practicable but no later than 48 hours before the next meeting of the committee. An agency may withhold from disclosure any information that

would be exempt from disclosure under section 552 of title 5, United States Code.

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

(3) *GRANT REVIEWS.*—In the case of grant reviews, disclosure of information required by subsection (a)(3) may be provided in the aggregate rather than by individual grant.

(c) *PROVISION OF INFORMATION BY ADMINISTRATOR OF GENERAL SERVICES.*—The Administrator of General Services shall provide, on the official public website of the General Services Administration, electronic access to the information made available by each agency under this section.

(d) *AVAILABILITY OF MEETING MATERIALS.*—Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of advisory committee meeting materials.

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TRADE ACT OF 1974

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

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SEC. 135. INFORMATION AND ADVICE FROM PRIVATE AND PUBLIC SECTORS.

(a) **IN GENERAL.**—

(1) The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) negotiating objectives and bargaining positions before entering into a trade agreement under this title or section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015;

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States, including those matters referred

to in Reorganization Plan Number 3 of 1979 and Executive Order Numbered 12188, and the priorities for actions thereunder.

To the maximum extent feasible, such information and advice on negotiating objectives shall be sought and considered before the commencement of negotiations.

(2) The President shall consult with representative elements of the private sector and the non-Federal governmental sector on the overall current trade policy of the United States. The consultations shall include, but are not limited to, the following elements of such policy:

(A) The principal multilateral and bilateral trade negotiating objectives and the progress being made toward their achievement.

(B) The implementation, operation, and effectiveness of recently concluded multilateral and bilateral trade agreements and resolution of trade disputes.

(C) The actions taken under the trade laws of the United States and the effectiveness of such actions in achieving trade policy objectives.

(D) Important developments in other areas of trade for which there must be developed a proper policy response.

(3) The President shall take the advice received through consultation under paragraph (2) into account in determining the importance which should be placed on each major objective and negotiating position that should be adopted in order to achieve the overall trade policy of the United States.

(b) ADVISORY COMMITTEE FOR TRADE POLICY AND NEGOTIATIONS.—

(1) The President shall establish an Advisory Committee for Trade Policy and Negotiations to provide overall policy advice on matters referred to in subsection (a). The committee shall be composed of not more than 45 individuals and shall include representatives of non-Federal governments, labor, industry, agriculture, small business, service industries, retailers, non-governmental environmental and conservation organizations, and consumer interests. The committee shall be broadly representative of the key sectors and groups of the economy, particularly with respect to those sectors and groups which are affected by trade. Members of the committee shall be recommended by the United States Trade Representative and appointed by the President for a term of 4 years or until the committee is scheduled to expire. An individual may be reappointed to committee for any number of terms. Appointments to the Committee shall be made without regard to political affiliation.

(2) The committee shall meet as needed at the call of the United States Trade Representative or at the call of two-thirds of the members of the committee. The chairman of the committee shall be elected by the committee from among its members.

(3) The United States Trade Representative shall make available to the committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c) GENERAL POLICY, SECTORAL, OR FUNCTIONAL ADVISORY COMMITTEES.—

(1) The President may establish individual general policy advisory committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate, to provide general policy advice on matters referred to in subsection (a). Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, service, investment, defense, and other interests, respectively, including small business interests, and shall be organized by the United States Trade Representative and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments, as appropriate. The members of such committees shall be appointed by the United States Trade Representative in consultation with such Secretaries.

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the nontariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

(3) The President—

(A) may, if necessary, establish policy advisory committees representing non-Federal governmental interests to provide policy advice—

(i) on matters referred to in subsection (a), and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

(4) Appointments to each committee established under paragraph (1), (2), or (3) shall be made without regard to political affiliation.

(d) POLICY, TECHNICAL, AND OTHER ADVICE AND INFORMATION.— Committees established under subsection (c) shall meet at the call

of the United States Trade Representative and the Secretaries of Agriculture, Commerce, Labor, Defense, or other executive departments, as appropriate, to provide policy advice, technical advice and information, and advice on other factors relevant to the matters referred to in subsection (a).

(e) MEETING OF ADVISORY COMMITTEES AT CONCLUSION OF NEGOTIATIONS.—

(1) The Advisory Committee for Trade Policy and Negotiations, each appropriate policy advisory committee, and each sectoral or functional advisory committee, if the sector or area which such committee represents is affected, shall meet at the conclusion of negotiations for each trade agreement entered into under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, to provide to the President, to Congress, and to the United States Trade Representative a report on such agreement. Each report that applies to a trade agreement entered into under section 103 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 shall be provided under the preceding sentence not later than the date that is 30 days after the date on which the President notifies Congress under section 106(a)(1)(A) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 of his intention to enter into that agreement.

(2) The report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee shall include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in section 102 of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, as appropriate.

(3) The report of the appropriate sectoral or functional committee under paragraph (1) shall include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sector or within the functional area.

(f) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act apply—

(1) to the Advisory Committee for Trade Policy and Negotiations established under subsection (b); and

(2) to all other advisory committees which may be established under subsection (c) of this section, except that—

(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of **subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act** *subsections (a) and (b) of section 10 and subsections (a)(7), (a)(8), (a)(9), (b)(2), and (d) of section 11 of the Federal Advisory Committee Act* (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, nego-

tiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of its establishment.

(g) TRADE SECRETS AND CONFIDENTIAL INFORMATION.—

(1) Trade secrets and commercial or financial information which is privileged or confidential, and which is submitted in confidence by the private sector or non-Federal government to officers or employees of the United States in connection with trade negotiations, may be disclosed upon request to—

(A) officers and employees of the United States designated by the United States Trade Representative;

(B) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are designated as official advisers under section 161(a)(1) or are designated by the chairmen of either such committee under section 161(b)(3)(A) and staff members of either such committee designated by the chairmen under section 161(b)(3)(A); and

(C) members of any committee of the House or Senate or any joint committee of Congress who are designated as advisers under section 161(a)(2) or designated by the chairman of such committee under section 161(b)(3)(B) and staff members of such committee designated under section 161(b)(3)(B), but disclosure may be made under this subparagraph only with respect to trade secrets or commercial or financial information that is relevant to trade policy matters or negotiations that are within the legislative jurisdiction of such committee;

for use in connection with matters referred to in subsection (a).

(2) Information other than that described in paragraph (1), and advice submitted in confidence by the private sector or non-Federal government to officers or employees of the United States, to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), in connection with matters referred to in subsection (a), may be disclosed upon request to—

(A) the individuals described in paragraph (1); and

(B) the appropriate advisory committee established under this section.

(3) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Policy and Negotiations, or to any advisory committee established under subsection (c), may be disclosed in accordance with rules issued by the United States Trade Representative and the Secretaries of Commerce, Labor, Defense, Agriculture, or other executive departments, as appropriate, after

consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice the development of trade policy, priorities, or United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful consultations by advisory committee members with persons affected by matters referred to in subsection (a).

(h) **ADVISORY COMMITTEE SUPPORT.**—The United States Trade Representative, and the Secretaries of Commerce, Labor, Defense, Agriculture, the Treasury, or other executive departments, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established under subsection (c) as such committees may reasonably require to carry out their activities.

(i) **CONSULTATION WITH ADVISORY COMMITTEES; PROCEDURES; NONACCEPTANCE OF COMMITTEE ADVICE OR RECOMMENDATIONS.**—It shall be the responsibility of the United States Trade Representative, in conjunction with the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established under subsection (c) on a continuing and timely basis. Such consultation shall include the provision of information to each advisory committee as to—

- (1) significant issues and developments; and
- (2) overall negotiating objectives and positions of the United States and other parties;

with respect to matters referred to in subsection (a). The United States Trade Representative shall not be bound by the advice or recommendations of such advisory committees, but shall inform the advisory committees of significant departures from such advice or recommendations made. In addition, in the course of consultations with the Congress under this title, information on the advice and information provided by advisory committees shall be made available to congressional advisers.

(j) **PRIVATE ORGANIZATIONS OR GROUPS.**—In addition to any advisory committee established under this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal basis (and, if such information is submitted under the provisions of subsection (g), on a confidential basis) by private organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data and other trade information, as well as policy recommendations, pertinent to any matter referred to in subsection (a).

(k) **SCOPE OF PARTICIPATION BY MEMBERS OF ADVISORY COMMITTEES.**—Nothing contained in this section shall be construed to authorize or permit any individual to participate directly in any negotiation of any matters referred to in subsection (a). To the maximum extent practicable, the members of the committees established under subsections (b) and (c), and other appropriate parties, shall be informed and consulted before and during any such nego-

tiations. They may be designated as advisors to a negotiating delegation, and may be permitted to participate in international meetings to the extent the head of the United States delegation deems appropriate. However, they may not speak or negotiate for the United States.

(l) **ADVISORY COMMITTEES ESTABLISHED BY DEPARTMENT OF AGRICULTURE.**—The provisions of title XVIII of the Food and Agriculture Act of 1977 (7 U.S.C. 2281 et seq.) shall not apply to any advisory committee established under subsection (c).

(m) **NON-FEDERAL GOVERNMENT DEFINED.**—As used in this section, the term “non-Federal government” means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof;
or

(2) any agency or instrumentality of any entity described in paragraph (1).

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