

October 12, 2011

Representative Darrell Issa
Chairman
House Oversight and Government Reform Committee
2157 Rayburn House Office Building
Washington, DC 20515

Representative Elijah Cummings
Ranking Member
House Oversight and Government Reform Committee
B350A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa and Ranking Member Cummings:

On behalf of the undersigned organizations, we are writing in strong support of the “Federal Advisory Committee Act Amendments of 2011” (H.R. 3124), scheduled for consideration by the House Oversight and Government Reform Committee this Thursday.

This legislation, introduced by Representative Wm. Lacy Clay, Ranking Member Elijah Cummings, with several cosponsors, takes a major step toward ensuring that federal advisory committees are more transparent and accountable. These committees play an important role in our democracy.

In 2010, more than 1,000 federal advisory panels provided agencies with guidance on critical policy issues ranging from the BP oil disaster to the approval of FDA drugs and devices.¹ Therefore it is crucial that advisory panels are open and independent, and that advisory panel members are free of conflicts of interest.

Congress approved the Federal Advisory Committee Act (FACA) in 1972 to ensure that federal advisory panels did their work in public with the opportunity for public input. As Sen. Lee Metcalf wrote in 1971, “We are looking at two fundamentals, disclosure and counsel, the rights of people to find out what is going on, and if they want, to do something about it.”

Over the years, however, court rulings have created loopholes that allowed much of the work of advisory panels to be done in secret. Panels often included committee members with conflicts or with conflicts of interest undisclosed to the public.

In 2004, the Government Accountability Office (GAO) thoroughly examined the FACA process and raised serious concerns about the ways agencies select and designate members, too frequently wrongly designating experts as representative stakeholders not subject to conflict of interest reviews. The GAO also recommended greater transparency for the member selection process, such as “providing information on how the members of the committees are identified

¹ <http://www.gsa.gov/portal/content/248953>

and screened, and indicating whether the committee members are providing independent or stakeholder advice.”

H.R. 3124—nearly identical to a bill that passed the House with overwhelming support in the last Congress (H.R. 1320-111th)—would address several of the weaknesses identified by the GAO, close many of the FACA loopholes that have emerged in recent years, strengthen disclosure requirements regarding conflicts of interests, provide for greater transparency of meeting proceedings, and create more opportunities for public participation.

Specifically, H.R. 3124 would:

- Eliminate political litmus tests for potential members;
- Provide a mechanism for the public to nominate or comment on potential members;
- Clarify the distinction between Special Government Employees and representatives, prohibiting agencies from designating members as representatives in order to avoid federal ethics rules, and require greater oversight of designations by agency officials and the Office of Government Ethics;
- Close the loopholes for de facto members, subcommittees, and committees created under contract;
- Require agencies to publicly disclose committee records such as charters, plans for appointing members and achieving balance, lists of SGEs and representatives, conflict waivers, recusal statements, detailed minutes of meetings, descriptions of the committee’s efforts to use technology to provide public access to meetings, written determinations to keep meetings closed, and notices of future meetings; and
- Require additional information to be included in committee charters.

In addition to these reforms, Congress should urge agencies to provide greater public access to advisory committee meetings. Requiring that agencies provide detailed minutes is a step in the right direction, but only a basic step. The public deserves unfiltered access to committee proceedings in their entirety. We have heard that some agencies are concerned about the cost of providing audio/video recordings of committee meetings, and some are even reluctant to describe their efforts to make meetings accessible through online technologies. Congress could address these concerns by requiring the General Services Administration (GSA) to provide agencies with guidance on affordable options for providing live webcasts, asynchronous virtual meetings, audio/video recordings, and meeting transcripts. In particular, GSA should seek out solutions that could be shared so that the cost burden for each committee is lowered. Agencies also should be encouraged to seek out options for more open meetings, and to provide additional information regarding closed meetings, such as a summary of the issues discussed and a list of members and other individuals who attended the meeting.

Chairman Issa promised consideration of this legislation, and we are pleased that a vote in the House Oversight and Government Reform Committee is scheduled for tomorrow. We urge you and members of the committee to immediately pass H.R. 3124 and work to ensure its passage in the House. We look forward to continuing to work with you on efforts to strengthen FACA and to affirmatively reduce conflicts of interest on advisory committees.

Sincerely,

Citizens for Responsibility and Ethics in Washington

Climate Science Watch

National Women's Health Network

OMB Watch

Openthegovernment.org

POGO

Reproductive Health Technologies Project

Sunlight Foundation

Union of Concerned Scientists

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cc: Members of House Oversight and Government Reform Committee