

FEDERAL ADVISORY COMMITTEE ACT
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House Report (Government Operations Committee) No. 92-1017,
Apr. 25, 1972 [To accompany H.R. 4383]

House Conference Report No. 1403, September 18, 1972
[To accompany H.R. 4383]

Cong. Record Vol. 118 (1972)

DATES OF CONSIDERATION AND PASSAGE

House May 9, September 20, 1972

Senate September 12, 19, 1972

No Senate Report was submitted with this legislation. The House Report and the House Conference Report are set out.

HOUSE REPORT NO. 92-1017

THE Committee on Government Operations, to whom was referred the bill (H.R. 4383) to authorize the Office of Management and Budget to establish a system governing the creation and operation of advisory committees throughout the Federal Government which are created to advise officers and agencies of the Federal Government, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

PURPOSE

H.R. 4383 seeks to promote the effective use of advisory committees in the executive branch of the Government. Advisory committees include such committees, boards, commissions, councils, conferences, panels, task forces, or other similar groups as the Congress, the President, or Federal agencies create in the interest of obtaining advice for the President or for any agency. The bill provides guidelines for the creation of advisory committees and provides for the establishment of a Committee Management Secretariat in the Office of Management and Budget to oversee the operations of advisory committees.

The bill requires the President to report to the Congress his views regarding the public recommendations of Presidential advisory committees and to make an annual report on the activities of advisory committees in existence in the executive branch of Government during the preceding calendar year.

H.R. 4383 provides for the termination of advisory committees other than those created by statute before the enactment of this bill. Any advisory committee established by statute after the date of enactment of the bill will terminate upon the expiration of the 2-year term following the date of enactment of the bill unless its termination is otherwise provided for by statute. Nonstatutory advisory committees,

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whether created before or after the date of enactment of H.R. 4383 will terminate following the expiration of a 2-year period following the effective date of the act or the date of their establishment unless the creating authority takes appropriate action to continue their existence. Such a continuing action must be taken every 2 years, if a non-statutory committee is to continue in existence.

The bill provides for public notice of the meetings of advisory committees and for public access to their records. H.R. 4383 also requires the Library of Congress to establish a depository for copies of reports of advisory committees and such reports would be available for public inspection.

SUMMARY AND BACKGROUND

History of Committee Investigation

The Committee on Government Operations since the beginning of the second session of the 91st Congress has been evaluating the use of advisory committees by the Federal Government. During March and May 1970 the Special Studies Subcommittee held hearings on this subject.

At the same time the subcommittee, assisted by GOA personnel, compiled a considerable amount of information on the number and kind of advisory committees used by officers and agencies of the Federal Government.¹ Based on the findings of this investigation, the Committee on December 11, 1970, submitted to the 91st Congress a report on "The Role and Effectiveness of Federal Advisory Committees."

The report recommended that "The Congress should spell out in public law the philosophy behind and need for advisory bodies and definitely establish policy and administrative criteria for their use at all levels of government."² On February 17, 1971, Representative John S. Monagan, who chaired the Special Studies Subcommittee hearings, introduced H.R. 4383, which implements the committee's recommendations. H.R. 4383 was cosponsored by Mr. Gallagher, Mr. Myers, Mr. Moorhead, Mr. Rosenthal, and Mr. Mann. An identical bill, H.R. 9601, was introduced by Mr. Monagan for himself and Mr. Podell. H.R. 4383 was referred to the Legal and Monetary Affairs Subcommittee, which held public hearings on the bill on November 4, 1971. Testimony was received from U.S. Senators Lee Metcalf and William V. Roth, and Associate Director of the Office of Management and Budget, Mr. Frank Carlucci.

Definition of Terms

Investigation by the Special Studies Subcommittee revealed that there are at least 2,600 interagency and advisory committees and possibly as many as 3,200 presently existing.³ These figures are only estimates, however, since many agencies are unable to supply a list of all their advisory bodies. One agency listed 383 advisory committees at first. It later revised that figure to 420, and still later to 511.⁴ In making its estimates of the number of advisory committees the subcommittee used the definitions of advisory and interagency committees contained in Executive Order 11007 and OMB Circular A-63, which

¹ H. Rept. No. 91-1731, 91st Cong., 2d sess.

² *Ibid.*, p. 20.

³ *Ibid.*, p. 14.

⁴ *Ibid.*

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are set out below. The term "advisory committee" as used in the bill incorporates elements of the definitions contained in the Executive order and the OMB circular.

The term "advisory committee" is defined by section 3(2) of the bill as follows:

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 by the President, or
- (c) established by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies, except that such term excludes (i) the Advisory Committee on Intergovernmental Relations and (ii) any committee which is formed by a single agency and which is composed wholly of full time officers or employees of such agency.

This definition compares with the following definition of "advisory committee", contained in Executive Order 11007:

The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other subgroup thereof, that is formed by a department or agency of the Government in the interest of obtaining advice or recommendations, or for any other purpose, and that is not composed wholly of full-time officers or employees of the Government. The term also includes any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, that is not formed by a department or agency, but only during any period when it is being utilized by a department or agency in the same manner as a Government-formed advisory committee.

There are, however, several important differences between the definition of "advisory committee" in the bill and the definition in Executive Order 11007:

(1) H.R. 4383 includes within its definition committees which are composed wholly of officers or employees of the Federal Government, if such officers or employees are not drawn entirely from a single agency. In this respect the definition contained in the bill is similar to the definition of "interagency committee" contained in OMB Circular No. A-63:

"... the term 'interagency committee' means any formally constituted committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, that is composed of officers or employees of more than one department or agency of the Government and that is organized to meet from time to time for purposes of formulating advice or recommendations, or for any other stated purpose."

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(2) The definition contained in H.R. 4383 includes advisory committees established by Congress or formed by the President as well as those formed by agencies of the Government.

The term advisory committee as used in this bill does not include committees or commissions which have operational responsibilities. Only those committees established for the purpose of obtaining advice are within the bill's definition. Thus, the Interstate Commerce Commission or the Civil Aeronautics Board would not be considered advisory committees, though these agencies might themselves be advised by advisory committees, which would come within the purview of the definition of advisory committee set out in the bill.

The term advisory committee does not include any contractor or consultant hired by an officer or agency of the government, since such contractor would not be a "committee, board, commission, council . . . , or similar group . . ."

The Advisory Commission on Intergovernmental Relations, which was established by Public Law 86-380 in 1959, is intended to be a permanent interlevel body which advises State and local governments as well as the Congress and the President on problems affecting more than one level of government. Because of its unique character, the commission has been excluded from the definition of an advisory committee contained in this bill.

The words "any committee . . . established by the President, or established by one or more agencies" are meant to include those committees which may have been organized before their advice was sought by the President or any agency, but which are used by the President or any agency in the same way as an advisory committee formed by the President himself or the agency itself. It would be contrary to the purpose and intent of this bill if a committee, such as the Advisory Council on Federal Reports, which is discussed below, were to be exempted from the provisions of this bill.

The term "agency" is defined as having the same meaning as it does in section 551 (1) of title 5 of the United States Code, which sets forth the rules of administrative procedure. Section 551 reads as follows:

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

- (A) the Congress;
- (B) the courts of the United States;
- (C) the governments of the territories or possessions of the United States;
- (D) the government of the District of Columbia; or except as to the requirements of section 552 of this title—
- (E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;
- (F) courts martial and military commissions;
- (G) military authority exercised in the field in time of war or in occupied territory; or
- (H) functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix:

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The definition includes departments or agencies of the executive branch and independent agencies of the Federal Government.

A "Presidential advisory committee" is defined as an advisory committee which advises the President. A Presidential advisory committee need not be created by the President. It could, for instance, be created by an act of Congress. If an advisory committee, however created, does render advice to the President, the President must take the steps prescribed in sections 6(a) and 6(b) of the bill to assure that the advice is properly evaluated. (See subsection on "Responsibilities of the President" below.)

Responsibilities of Committees of Congress

Before the Special Studies Subcommittee investigation in 1970, Congress had never made a comparable inquiry into the operations of advisory and interagency committees.⁵ Nor was the Special Studies investigation able to produce any more than an estimate of the number and cost of advisory committees.⁶ But that investigation did point to the need for tighter management of advisory committees.

H.R. 4383 recognizes that the Congress cannot undertake the administration of advisory committees, and this function is assigned to the executive branch and the Office of Management and Budget. However, the submission of information on the names, number, cost and functions of advisory committees to committees of Congress by the executive branch will assist the Congress immeasurably in the exercise of its oversight responsibilities. Toward that end section 6(c) of the bill provides for annual reports to the Congress which are to include the names, functions, and costs of advisory committees in existence during the previous calendar year.

The 1970 committee report recommended that congressional committees review advisory committees within their jurisdictions.⁷ Section 4(a) of the bill provides for such a review to be made pursuant to the Legislative Reorganization Act of 1970,⁸ which requires the standing committees of Congress to "review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee."⁹

The Congress itself creates advisory committees by legislation, and in that process steps can be taken to assure that these committees will be effective. The 1970 committee report recommended that Congress prescribe guidelines for advisory committees which it creates, including "a clearly defined mission, balanced representation, assurance of autonomy, legislative authorization for funds, a time certain for termination, a time certain for submission of any report. . . ."¹⁰ Section 4(b) of the bill implements that recommendation. Section 4(c) provides that these guidelines should also be followed by the President, agency heads, or other Federal officers in creating advisory committees.

Particularly important among the guidelines are [1] the requirement contained in § 4(b) (2) that "the membership of an advisory committee be fairly balanced in terms of the points of view represented

⁵ H. Rept. No. 91-1731, p. 6.

⁶ *Ibid.*, p. 14.

⁷ H. Rept. 91-1731, p. 20.

⁸ Legislative Reorganization Act of 1970.

⁹ *Ibid.*, § 136.

¹⁰ House Report No. 91-1731, p. 20.

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and functions to be performed" and [2] the requirement contained in § 4(b) (3) that in creating an advisory committee the creating authority should include "appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest."

One of the great dangers in the unregulated use of advisory committees is that special interest groups may use their membership on such bodies to promote their private concerns. Testimony received at hearings before the Legal and Monetary Affairs Subcommittee pointed out the danger of allowing special interest groups to exercise undue influence upon the Government through the dominance of advisory committees which deal with matters in which they have vested interests.¹¹

In its report on "The Establishment of a National Industrial Wastes Inventory" this committee commented on the operations of the Advisory Council on Federal Reports, which was organized by several national business organizations at the request of the Office of Management and Budget.¹² When Council members met with government officials to consider a proposed national industrial wastes inventory questionnaire, only representatives of industry were present. No representatives of conservation, environment, clean water, consumer, or other public interest groups were present. This lack of balanced representation of different points of view and the heavy representation of parties whose private interests could influence their recommendations would be prohibited by the provisions contained in section 4 of the bill.

Responsibilities of the Director of the Office of Management and Budget

The Office of Management and Budget has a central role in the control of the number and use of advisory committees. It has undertaken responsibility for the control of interagency committees by the issuance of OMB Circular A-63 and by undertaking a revision of Executive Order 11007 to improve the management of advisory committees.

Section 5 of the bill provides for the creation of a Committee Management Secretariat in OMB which would assist in the formation and staffing of new advisory committees and in the management of those in existence.¹³ In addition, Section 5 of the bill requires the Director of OMB to perform a comprehensive review of the activities and responsibilities of advisory committees and to prescribe administrative guidelines and management controls applicable to them.

Although it concurs in the objectives of the bill H.R. 4383, OMB has advocated administrative action to control the use of advisory committees. The OMB position was stated in testimony before the Subcommittee by the Associate Director of OMB, Mr. Frank Carlucci:

... we concur in the general objectives of H.R. 4383. We are moving to gain most of those objectives affecting the executive branch through administrative regulation, which will allow us to adjust the operation of the system as we gain experience with it. The number and variety of committees in

¹¹ Hearings before the Legal and Monetary Affairs Subcommittee, House Committee on Government Operations, Nov. 4, 1971, pp. 13-55.

¹² The Establishment of a National Industrial Wastes Inventory, H. Rept. No. 91-1717, Dec. 10, 1970, pp. 17-20.

¹³ H. Rept. No. 91-1731, pp. 17 and 22.

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the Federal Government impel us to seek a more flexible approach. We believe additional legislation is not needed.¹⁴

The record argues against OMB's assertion that legislation is not needed. In 1957, the House of Representatives passed H.R. 7390 (85th Cong.) was introduced by Representative Dante B. Fascell, a member of the committee, and reported by this committee. H.R. 7390 sought to regulate the use of advisory committees and required an annual public report by the President on the function and membership of each advisory committee.¹⁵ The Senate took no formal action on that measure.

The Bureau of the budget responded to the legislative moves toward reform during the 85th Congress by issuing a bulletin entitled "Standards and Procedures for the Utilization of Public Advisory Commissions by Government Departments", which incorporated many of the guidelines contained in H.R. 7390. The guidelines were further formalized by Executive Order 11007, signed on February 26, 1962.

Despite the existence of Executive Order 11007 and OMB Circular No. A-63, dated March 2, 1964, the fact is that "a complete inventory of all advisory and interagency committees within the executive branch of the Government is not available, and partial listing that are available are often outdated . . . Even the Executive Office of the President cannot provide a complete listing of committees or commissions that have been created to advise the President."¹⁶

On March 17, 1970, the Assistant Director of OMB, Mr. Dwight Ink testified before the Special Studies Subcommittee. He recognized the need for a permanent office having responsibility for the control of advisory committees.¹⁷ He also stated that OMB had developed a draft revised OMB Circular A-63, which would be released soon.¹⁸

Nearly 15 months later, on June 10, 1971, OMB Associate Director Arnold Weber, responding to the committee's request for views on H.R. 4383, stated that a plan to improve Federal committee oversight had been developed by OMB and a directive implementing that plan would be ready for issuance in three weeks.¹⁹

On November 4, 1971, nearly 4 months later, the promised directive had not yet been issued. Mr. Carlucci, who had replaced Mr. Weber as Associate Director of OMB, stated that OMB hoped to have the directive out within 60 days.²⁰

Over 5 months later the directive had not been issued. Thus, nearly 25 months after OMB first promised a new directive regarding the use of advisory committees, no directive has been forthcoming.

Even if OMB does produce a directive soon, the need for H.R. 4383 will not be mitigated. In spite of continued congressional pressure OMB has been unable to assign more than one man to the task of managing advisory committees and coordinating their use by Federal agencies. There is not even any assurance that this one OMB staff man will be assigned to this function on a full-time basis.

¹⁴ Hearings before the Legal and Monetary Affairs Subcommittee, House Committee on Government Operations, Nov. 4, 1971, p. 75.

¹⁵ Hearings before the Special Studies Subcommittee, House Committee on Government Operations, Mar. 12, 17, and 19, 1970, p. 227.

¹⁶ The Role and Effectiveness of Federal Advisory Committees, H. Rept. No. 9101731, Dec. 11, 1970, p. 14.

¹⁷ Hearings before the Special Studies Subcommittee, House Committee on Government Operations, Mar. 12, 17, and 19, 1970, p. 83.

¹⁸ *Ibid.*, p. 84.

¹⁹ Hearings before the Legal and Monetary Affairs Subcommittee, House Committee on Government Operations, Nov. 4, 1971, p. 99.

²⁰ *Ibid.*, p. 80.

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OMB has stated that it has reduced the number of interagency committees from 850 to 620 and advisory committees from 1,400 to 1,100. However, OMB has failed to respond to a request by Chairman Monagan of the Legal and Monetary Affairs Subcommittee for a list of the advisory committees which have been eliminated and an estimate of the cost savings from their elimination.

Responsibilities of the President

H.R. 4388 provides that the President shall assign to such agency as he deems appropriate the responsibility for evaluating and taking action with respect to all public recommendations of Presidential advisory committees. This provision is designed to prevent a situation such as arose with the report of the National Commission on Urban Problems, whose final report the White House Staff refused to accept. The Commission's cost came to \$1,500,000.

The bill provides that the President shall refer the public recommendations of Presidential advisory committees to appropriate agencies for evaluation and that within one year after receipt of such public recommendations he shall make a report to the Congress containing his views on any such recommendations. The rationale for this procedure is contained in the 1970 committee report:²¹

This procedure would help to justify the investment in advisory groups and their utilization. It would assure that Government funds would not be wasted but used as economically and efficiently as possible. Because this procedure provides for accountability to the public and the Congress, it would insure more discriminating use of advisory groups.

Section 6(c) provides that the President shall make an annual report to the Congress on the activities, status and changes in composition of advisory committees in existence during the preceding calendar year. This report would be based on the information developed during the annual comprehensive review of advisory committees made by the Director of OMB pursuant to § 5(6) of this bill. The report would include an estimate of the annual cost to the United States of funding, supplying, and maintaining each advisory committee. The report would also contain a list of advisory committees created by Congress which the President recommends be abolished together with his reasons therefor. This information is necessary if the committees of Congress are to maintain proper oversight of the advisory committees under their jurisdiction as provided for in section 4(b) of this act. Those portions of the report which deal with advisory committees whose functions should not be revealed in the interest of national security would be reported on in such a way as to avoid that danger.

Responsibilities of the Library of Congress

Section 7(a) of the bill provides that the Director of OMB shall provide for at least eight copies of each report of an advisory committee to be filed with the Library of Congress.

Section 7(b) provides that the Freedom of Information Act shall apply to the material which the Director is required to submit under section 7(a). An agency authorized to provide or withhold material

²¹ The Role and Effectiveness of Federal Advisory Committees, H. Rept. No. 19-1731, Dec. 11, 1970, p. 21.

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under the Freedom of Information Act may exercise such authority with respect to the material produced by an advisory committee established to advise that agency. However, it is the intent of the committee that filing by the Director with the Library of Congress of the material listed in section 7(a) and public access to such material be completely governed by the Freedom of Information Act.

The Librarian of Congress is required to establish a depository for each report where they shall be available for public inspection and use.

Responsibilities of Agency Heads

Section 8 of the bill requires agency heads to establish administrative guidelines and management controls for advisory committees, consistent with the directives of the Director of OMB. This section also requires that each agency maintain general information on the nature and function of each advisory committee within its jurisdiction.

Termination of Advisory Committees

The 1970 committee report recommended that "Adequate procedures should be established for the termination of all committees, both interagency and advisory, created by statute or by other means."²²

Section 9(a) of the bill provides for the termination of each advisory committee other than an advisory committee established by statute within 2 years after the effective date of the bill. In the case of an advisory committee created after the effective date of the bill, discontinuation shall take place within 2 years. This section further provides that an advisory committee may be continued for successive 2-year periods, if the creating authority takes appropriate action to continue the advisory committee.

Section 9(b) of the bill provides that an advisory committee created by Congress after the date of enactment of the act shall terminate upon the expiration of a 2-year period following the date of enactment of the statute establishing such committee, unless its termination is otherwise provided for by law.

Administration of Advisory Committees

The 1970 committee report recommended that "The Office of Management and Budget together with the Civil Service Commission should study the varying rates of payment per day for consultant members of advisory bodies and establish uniform government rates for comparable services."²³ Section 10(a) of the bill provides that the Director of OMB shall establish guidelines with respect to uniform fair rates of pay of members, staffs, and consultants of advisory committees and unless otherwise provided by statute no member of an advisory committee shall be paid compensation for his services at a rate in excess of that specified for grade GS-18 in section 5332 of title 5 of the United States Code.

The 1970 committee report revealed that of the 1519 advisory committees responding to the committee's inquiry at least 51 had not met for 2 years or more.²⁴ Section 10(b) of the bill provides that each advisory committee shall meet not less than two times per year at the call of its chairman.

²² The Role and Effectiveness of Federal Advisory Committees, H. Rept. No. 91-1731, Dec. 11, 1970, p. 24.

²³ The Role and Effectiveness of Federal Advisory Committees, H. Rept. No. 91-1731, Dec. 11, 1970, p. 22.

²⁴ *Ibid.*, p. 16.

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Section 10(b) also provides that each advisory committee shall keep minutes of its meetings, including a record of 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 chairman of the advisory committee is required to certify to the accuracy of the minutes. This provision will help to remedy the situation disclosed in the 1970 committee report which revealed that "it is impossible to find accurate and complete records on all Presidential committees."²⁵

Section 10(b) also provides that:

The provisions of section 551 of title 5, United States Code, shall apply to all records and files including agenda, transcripts, studies, analyses, reports, meeting notices, and any other data, compilations, and working papers which were made available to or prepared for or by each advisory committee.

This provision has the effect of assuring openness in the operations of advisory committees. This provision coupled with the requirement that complete and accurate minutes of committee meetings be kept serves to prevent the surreptitious use of advisory committees to further the interests of any special interest group. Along with the provisions for balanced representation contained in §4 of the bill, this requirement of openness is a strong safeguard of the public interest.

The provisions contained in section 10(b) of H.R. 4383 are not meant to replace or in any way limit or change the provisions of § 552 of title 5 of the United States Code.

Section 10(c) of the bill requires that each advisory committee give timely public notice of the time and place of committee meetings. This requirement, like those contained in section 10(b), is designed to assure public access to deliberations of advisory committees. An exception to the requirement that notice be given is made in the case where notice would endanger the national defense and foreign policy.

Under section 10(d) of the bill, each advisory committee is required to keep records of its activities which will fully disclose the disposition of the committee's funds. These records must be accessible to the Comptroller General of the United States for the purpose of audit.

Cost Estimate

The Office of Management and Budget has estimated that the cost to the executive branch in implementing H.R. 4383 will be \$370,600 in the first year of operation and between \$277,500 and \$291,200 per year in the next 5 years.

The Library of Congress has stated that the cost of implementing § 7 of the bill can be absorbed within the Library's present budget.

The 1970 committee report estimated that the annual cost of maintaining the more than 1,800 advisory bodies which exist within the Federal Government is approximately \$75 million. This does not include the cost of maintaining approximately 900 interagency committees, which would also be covered by H.R. 4383.

It is impossible to estimate the savings which will result from the implementation of the provisions of H.R. 4383, though it is expected

²⁵The Role and Effectiveness of Federal Advisory Committees, H. Rept. No. 91-1731, Dec. 11, 1970, p. 10.

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that considerable savings will result from the elimination of those advisory committees which no longer serve a useful purpose and the more effective use of those advisory committees which are needed. The efficient use of the more than \$75 million presently being spent on advisory committees certainly justifies an expenditure of \$300,000 per year.

Effective Date

H.R. 4383 which became effective 90 days after the date of its enactment.

The following are selected agency responses to the committee's request for views on H.R. 4383:

THE LIBRARIAN OF CONGRESS,
Washington, D.C., March 22, 1971.

HON. CHET HOLIFIELD,
*Chairman, Committee on Government Operations,
U.S. House of Representatives, Washington, D.C.*

DEAR MR. HOLIFIELD: Thank you for your letter of March 10, 1971 requesting my comment on H.R. 4383, the "Federal Advisory Committee Standards Act." The bill seems excellent in every respect and I have only one comment. Section 7 provides for the submission to the Library of Congress of "at least one copy of each report made by every advisory committee and where appropriate background papers prepared by consultants." It would be desirable if the Library could receive eight copies of these reports and papers for its general collections, exchange programs, and for use by the Congressional Research Service but four copies would meet our minimum needs.

I appreciate the opportunity to comment on this proposed Act.

Sincerely yours,

JOHN G. LORENZ,
Acting Librarian of Congress.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 10, 1971.

HON. CHET HOLIFIELD,
*Chairman, Committee on Government Operations,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Office of Management and Budget on H.R. 4383, a bill, "To authorize the Office of Management and Budget to establish a system governing the creation and operation of advisory committees throughout the Federal Government which are created to advise officers and agencies of the Federal Government."

The bill would require Congress to exercise continuing review of the advisory committees under its jurisdiction to prevent duplication of effort, to protect the independent judgment of such committees, and to ensure adequate measures for their proper administration. Similarly, the bill provides that the Office of Management and Budget shall review the activities of advisory committees under the jurisdiction of the executive branch, prescribe administrative guidelines and management controls, provide assistance to improve the performance of such committees and recommend sums necessary for their administration.

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The bill also requires certain functions to be assigned to the Domestic Council and requires each Federal agency to establish guidelines and management controls over committees responsible to it. The bill sets a two-year limit on the life of committees and requires the creating authority to take positive action to continue a committee for a longer time. It imposes certain requirements for the operation of committees regarding rates of pay, frequency of meetings, minutes, and records.

We agree with the basic purpose of H.R. 4383. We believe, however, that so far as it applies to committees under the jurisdiction of the executive branch, improved committee management can be achieved without congressional action. In recent months, based on the report of the Special Studies Subcommittee of the House Government Operations Committee "The Role and Effectiveness of Federal Advisory Committees" and our own studies, we have developed a comprehensive plan for improved oversight of Federal committee management. We believe our plan is fully consistent with the intent of H.R. 4383, and we are about to initiate implementation of it.

The plan provides for:

- the coordination of existing policy directives for committees and will lead ultimately to a single integrated policy directive for all committees,

- a strengthened OMB role in the administrative review and analysis of Presidential committees,

- clarified and strengthened agency and OMB roles in the management of interagency and public advisory committees.

- establishment of agency committee management systems to enhance agency committee management capacity,

- better reporting of the status of committees and their activities, appropriate public access to Federal committees' meetings and records,

- safeguards against conflicts of interest.

We anticipate that the appropriate directive implementing this plan will be ready for issuance in about three weeks. Once the plan is operational, OMB, intends to evaluate effectiveness of it on a regular basis and to change it as experience indicates the need to do so. In our view, this type of flexible approach is particularly advantageous and can be carried out without additional legislation.

In view of the above, the Office of Management and Budget recommends against enactment of the bill.

Sincerely,

ARNOLD R. WEBER,
Associate Director.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 15, 1971.

B-127685.

HON. CHET HOLIFIELD,
*Chairman, Committee on Government Operations,
House of Representatives*

DEAR MR. CHAIRMAN: In reply to your request of March 10, 1971, for a report on H.R. 4383, to be cited as the "Federal Advisory Committee

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Standards Act," we submit the following comments for your consideration.

H.R. 4383 would authorize the Office of Management and Budget to establish a system governing the creation and operation of advisory committees throughout the Federal Government which are created to advise officers and agencies of the Federal Government; it would:

(a) Establish a Committee Management Secretariat within the Office of Management and Budget, which would be the principal agency within the Office having responsibility for matters relating to advisory committees;

(b) assign to the Domestic Council (of the President) responsibility for evaluating and taking action with respect to recommendations made to the President by presidential advisory committees;

(c) provide for administrative guidelines and management controls applicable to advisory committees;

(d) provide for a copy of each report made by every advisory committee to be submitted to the Library of Congress where it would be available for public inspection; and

(e) provide for annual reporting by the President to the Congress with respect to the activities, status, composition, and duration of advisory committees.

The bill seems to be generally in accord with our views relating to the control of advisory committees in the Federal Government and the evaluation and utilization of the work produced by them as expressed in our testimony before the Special Studies Subcommittee on March 12, 1970 (see Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives, 91st Cong., 2d sess., on "Presidential Advisory Committees," March 12, 17, and 19, 1970; pp. 36-59).

We offer the following comments on certain provisions of the bill.

Clarification is needed of the first sentence of section 5(b), lines 3 to 8, page 5, where some words seem to have been omitted making the meaning unclear.

Section 5(b), lines 10 to 13, page 5, states "Upon the completion of the Director's review he shall make recommendations to the President with respect to action he believes should be taken." We suggest that the Committee consider placing a time limit for making the recommendations.

Starting on line 12, page 8, section 9, the bill reads: "The property, funds and unexpended balances of appropriations of advisory committees discontinued by this section shall be disposed of as the Director shall provide." We believe the words "the Director shall provide" should be stricken and the words "provided by applicable law" should be substituted therefor.

We believe that clarification is needed of section 10(b) relative to "consultants of advisory committees," lines 23 and 24 of page 8. If the word "consultants" refers only to consultants otherwise authorized by law to be employed, the bill should specifically so provide. If the term is intended to authorize the hiring of outside consultants generally to advise the advisory committees, we suggest changing the second sentence of section 10(b) starting on line 1, page 9, to include consultants to the committees. If the hirings of outside consultants is not contem-

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plated by the bill, we suggest the Committee consider authorizing such hiring.

Section 10(e) does not state whether the departments and agencies furnishing information would be reimbursed for the costs they incur. The Committee may wish to clarify the section in this respect.

Sincerely yours,

ROBERT F. KELLER,
Assistant Comptroller General of the United States.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

This section provides that the bill may be cited as the "Federal Advisory Committee Standards Act."

Section 2. Findings and Purposes

This section states the findings of Congress that numerous committees and similar groups exist to advise the Federal executive branch, that the need for such groups has not been adequately reviewed, and that some should be disestablished or their functions revised, and that standards should be prescribed to govern the creation, administration, and operation of such bodies.

Section 3. Definitions

This section defines terms used in the bill.

(1) *Director* is defined to mean the Director of the Office of Management and Budget.

(2) *Advisory committee* is defined to mean any committee, board, commission, council, conference, panel, task force, or similar group, or any subcommittee or other subgroup thereof which is established by law, or established by the President, or established by one or more agencies, in the interest of obtaining advice or recommendations for the President or Federal agencies. The term does not include the Advisory Commission on Intergovernmental Relations and any committee which is in a single agency and is composed wholly of full time officers or employees of that agency.

(3) *Agency* has the same meaning in the bill as the term has in section 551(1) of title 5, United States Code. Under that section, agency is defined as any authority of the Government of the United States (whether or not it is within or subject to review by another agency) but does not include the Congress; the courts of the United States; the governments of the territories or possessions of the United States; the government of the District of Columbia.

(4) *Presidential advisory committee* is defined to mean an advisory committee which advises the President.

Section 4. Responsibilities of Committees of Congress

Subsection (a) requires each standing committee of the House and Senate to make a continuing review of the activities of the advisory committees under its jurisdiction with a view to determining whether the responsibilities assigned such advisory committees should be revised, whether such advisory committees should be merged, or whether any such advisory committee no longer performs a necessary function. Each such standing committee is directed to take appropriate action to obtain the enactment of necessary legislation to implement its recommendations under this subsection.

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Subsection (b) requires each standing committee of the House and Senate to endeavor to assure no duplication in the creation of advisory committees, and that all legislation creating such advisory committees (1) contains clearly defined purposes for such advisory committees, (2) requires balanced membership in such advisory committees as to viewpoints to be represented and the functions to be performed, (3) assures that the advice of such advisory committees will not be influenced inappropriately by the appointing authority or any special interest, (4) contains provisions dealing with appropriation authorizations, dates for submission of reports (if any), duration of existence, and the publication of reports and other materials to the extent the standing committee finds section 10 of this bill is inadequate and (5) assures adequate staff, quarters, and funding for such advisory committee.

Subsection (c) requires the President, agency heads, and other Federal officials to follow the guidelines set out in subsection (b) of this section in creating any advisory committee.

Section 5. Responsibilities of the Director, Office of Management and Budget

Section 5(a) directs the Director to establish in the Office of Management and Budget a Committee Management Secretariat, which shall be the principal agency within such office concerned with advisory committees.

Subsection (b) directs the Director to institute a comprehensive review of each advisory committee in existence to determine if such committee is achieving its objectives; whether its responsibilities should be revised; whether it should be merged with another committee; and whether it any longer performs a useful function. The Director is further directed to make recommendations to the President upon completion of this review. Such reviews are required immediately after the enactment of the bill and annually thereafter. Agency heads are directed to cooperate with the Director in making them.

Subsection (c) directs the Director to prescribe administrative guidelines and management controls to be applicable to advisory committees.

Section 6. Responsibilities of the President

Subsection (a) directs the President to assign to such agency as he deems appropriate, responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

Within one year after a Presidential advisory committee has submitted a public report to the President, the President is directed by subsection (b) to make a report to the Congress containing his views on any recommendations contained in such report and stating either his proposals for action with respect to the recommendations or his reasons for inaction.

Subsection (c) directs the President, not later than March 31 of each calendar year, to make a report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. This report must contain the name of every advisory committee, the date of and authority for its creation, its termination date or date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings,

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the name and occupation of its current members, and its total estimated annual cost to the United States. The report must also contain a list of advisory committees established by law which the President recommends be abolished, along with his reasons therefor.

Section 7. Responsibilities of Library of Congress

Subsection (a) requires the Director to provide for the filing with the Library at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Library is directed to establish a depository for such reports and papers where they may be inspected and used by the public.

Subsection (b) provides that section 552 of title 5 of the United States Code, commonly called the Freedom of Information Act, is applicable to this section.

Section 8. Responsibilities of Agency Heads

This section requires each head of an agency to establish rules for the advisory committees set up to advise that head, consistently with the directives of the Director under section 5(c). General information on the nature and function of each advisory committee is required to be kept by the agency under whose jurisdiction it is.

Section 9. Termination of Advisory Committees

Subsection (a) terminates the existence of advisory committees (other than those established by statute) two years after the date of enactment of the bill or the date of the creation of such advisory committee, whichever is later, unless the President or agency, as the case may be, continues its existence. Each advisory committee must be so continued each succeeding two years.

Subsection (b) terminates the existence of advisory committees established by statute after the date of enactment of H.R. 4383 within two years following the later of (1) the date of enactment of the bill, or (2) the date of enactment of the statute establishing such committee, unless its termination is otherwise provided for by statute.

Section 10. Administration of Advisory Committees

Subsection (a) (1) of this section requires the Director after a study and consultation with the Civil Service Commission, to establish guidelines with respect to uniform fair pay rates for advisory committees in a manner which appropriately recognizes the responsibilities and qualifications required and other relevant factors. Unless otherwise provided by statute, no member of an advisory committee or its staff is to be paid compensation for his services at a rate in excess of the rate specified at the time of such service for grade GS-18.

Subsection (a) (2) of this section makes it clear that persons who are, or were immediately before their service with an advisory committee, full-time employees of the United States may continue to receive the compensation they otherwise would receive as such a full-time employee.

Subsection (b) requires each advisory committee to meet at least twice annually and to keep minutes of each meeting, including 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. Subsection (b) also makes the provisions of section 552 of title 5 of the United

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States Code, commonly called the Freedom of Information Act, applicable to all records, reports and other papers made available to or prepared for or by any advisory committee.

Subsection (c) requires each advisory committee to give timely public notices of its meetings, except when such notice would endanger the national defense and foreign policy.

Subsection (d) requires each advisory committee to keep such records of its activities as will fully disclose the disposition of any funds which may be at its disposal and the nature and extent of its activities in carrying out its functions. This subsection also gives the Comptroller General of the United States or his representative access, for the purposes of audit, to any books, documents, papers, and records of each statutory advisory committee.

Section 11. Effective Date

This section provides that the bill will become effective 90 days after the date of its enactment.

INDIVIDUAL VIEWS OF HON. JOHN E. MOSS

I regret that I must strongly dissent from the action of the committee in reporting H.R. 4383 in its present form. The subcommittee chairman, John S. Monagan, has done an outstanding job in uncovering the uncontrolled and heretofore unrecorded population explosion of advisory committees in the Federal Government. His hearings and reports have shown their uncontrolled growth, the utter lack of effective direction and guidelines governing them, their highly unreasonable secrecy and the often suspicious nature of their membership. Mr. Monagan has certainly proven the need for the types of controls H.R. 4383 provides over their creation and duration, their records and proceedings, their composition, their reporting, and the availability of information in their custody. He has also shown that many advisory committees have proven to be a complete waste of money either because they duplicate, in whole or in part, other committees or because nothing is done to follow up on their recommendations.

Nevertheless, I believe that in its present form the bill has one fatal flaw which unless corrected would merit its defeat. The bill covers, without distinction, (i) advisory committees formed in the executive branch of the Government by the President, by department heads and by other responsible officials in the executive branch, and (ii) advisory committees formed by and to advise the quasi legislative regulatory agencies created by Congress to assist Congress in carrying out its legislative functions.

The Director of the Office of Management and Budget, who is a leading official in the Executive Office of the President and who is the highest ranking of his most intimate advisers, is a very appropriate official to whom to give responsibility for carrying out the directives of the Act so far as they relate to the executive agencies under the control of the President. He is the President's right hand and will see to it that the President's instructions to his subordinates are followed.

But these very reasons should have impelled the committee to adopt amendments which I proposed to the bill to remove control over the formation and activities of advisory committees to the independent regulatory agencies from the Director of the Office of Management

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and Budget and to place that control in the Comptroller General, the statutory arm of the Congress. Only in this way can we prevent the further erosion of the independence of the quasi legislative independent regulatory commissions established over the years by the Congress to carry out the duties imposed on the Congress by the Commerce clause of the Constitution. It is of the utmost importance to Congress and to the people of the United States that the independence of these commissions be preserved and, particularly, that a further takeover of them by the Office of Management and Budget be prevented. Unfortunately, OMB has become a progressively more complex bureaucracy directly under the President and removed from immediate congressional surveillance.

My 16 years experience on the Interstate and Foreign Commerce Committee have shown me beyond doubt that each President, regardless of his party, has sought to expand further his authority or his ability to control and direct the activities of the independent quasi-legislative regulatory commissions. In its present form, H.R. 4383 would compromise the independence of these regulatory agencies to the extent that it includes them under the Director of the Office of Management and Budget or even under the President himself. I wish to repeat that the regulatory agencies are not agencies in the executive department; they are independent agencies established by Congress to carry out quasi-legislative functions.

I certainly hope that this bill will be brought to the floor of the House in a form that will permit the House to consider amendments to place surveillance of the quasi-legislative regulatory agencies where they belong directly under a statutory arm of Congress. I realize that the Comptroller General has many duties and is not anxious to assume others under this bill. Nevertheless, until Congress establishes another and a new office to assist it in overseeing the activities of the quasi-legislative commissions, the Comptroller General and his General Accounting Office are the most effective agencies we have to assist us this function.

The Comptroller General, of course, should be given the resources he needs to carry out this duty and other duties Congress has imposed upon him.

JOHN E. MOSS.

CONFERENCE REPORT NO. 92-1403

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon

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by the managers and recommended in the accompanying conference report:

1. SHORT TITLE

The Senate amendment changed the short title of the House bill to the "Federal Advisory Committee Act". The conference substitute conforms to the Senate amendment.

2. FINDINGS AND PURPOSES

The Senate amendment contained a more lengthy statement of findings and purposes than did the House bill, but did not differ substantially from the House bill. The conference substitute adopts a compromise between the two provisions.

3. DEFINITIONS

The Senate amendment contained definitions of "agency advisory committee", "Presidential advisory committee", and "advisory committee", while the House bill contained definitions of "advisory committee" and "Presidential advisory committee".

The conference substitute adopts the House definition of "Presidential advisory committee" without any change and adopts the House definition of "advisory committee" with modification.

The conference substitute definition of "advisory committee" includes committees which are established or utilized by the President or by one or more agencies or officers of the Federal Government. The conference substitute excludes from the definition of "advisory committee" the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, and any committee which is composed wholly of full-time officers or employees of the Federal Government.

The conference substitute deletes the Senate amendment definitions of "officer" and "employee".

4. APPLICABILITY OF THE PROVISIONS OF THE ACT

The Senate amendment contained a provision setting forth the applicability of provisions of the Act, while the House bill contained no comparable provision. The conference substitute adopts the language of the Senate amendment with modifications. The conference substitute specifically exempts from the applicability of the provisions of the Act any advisory committee established or utilized by the Central Intelligence Agency or by the Federal Reserve System.

The Act does not apply to persons or organizations which have contractual relationships with Federal agencies nor to advisory committees not directly established by or for such agencies.

5. RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

The Senate amendment and the House bill contained minor differences regarding the legislative review functions of the standing committees of Congress. The conference substitute adopts the language of the Senate amendment.

The Senate amendment and the House bill differed regarding the duties of the standing committees of Congress when considering

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legislation establishing advisory committees. The conference substitute adopts the House bill with minor modifications.

The House bill provides that when the President, any agency head, or any other Federal official establishes an advisory committee, he shall follow the guidelines which are set forth in the House bill for standing committees of the Congress when they are considering legislation establishing advisory committees. The Senate amendment contained no comparable provision. The conference substitute adopts the House bill.

6. RESPONSIBILITIES OF THE PRESIDENT

The Senate amendment and the House bill differed with respect to the responsibilities of the President. The conference substitute adopts a compromise provision which provides that the President may delegate responsibility for evaluating and taking action with respect to the public recommendations of Presidential advisory committees. The conference substitute further provides that the President or his delegate shall submit a report to Congress stating his proposals for action or his reasons for inaction with respect to such public recommendations.

The House bill required the President to make an annual report to Congress regarding advisory committees. The Senate amendment required the Director of the Office of Management and Budget to make a similar annual report. The conference substitute adopts the House bill with modifications. The modifications include the adoption of a provision similar to a provision contained in the Senate amendment excluding from such annual report information which should be withheld for reasons of national security.

7. RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The Senate amendment contained several differences from the House bill with respect to the responsibilities of the Director of the Office of Management and Budget.

As noted above, the Senate amendment required the Director to make an annual report to Congress on advisory committees. The conference substitute provides that the President shall make such annual reports, as did the House bill.

With respect to the other duties of the Director, the conference substitute adopts the language of the Senate amendment with slight modification.

The conference substitute requires the Director to include in budget recommendations a summary of amounts necessary for the expenses of advisory committees.

8. RESPONSIBILITIES OF AGENCY HEADS

The Senate amendment differed from the House bill in that it provided that each agency head should designate an Advisory Committee Management Officer with specified duties, and the House bill contained no comparable provision. The conference substitute adopts the Senate amendment with slight modifications.

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9. ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

The Senate amendment set forth a procedure to be followed when advisory committees are established and provided that advisory committees be utilized solely for advisory functions. The House bill had no comparable provision. The conference substitute adopts the Senate amendment with modifications.

10. ADVISORY COMMITTEE PROCEDURES

With regard to the availability of the records and other papers of advisory committees and public access to their meetings, the Senate amendment differed from the House bill. The conference substitute provides for publication in the Federal Register of timely notice of advisory committee meetings, except where the President determines otherwise for reasons of national security. The conference substitute further provides for public access to advisory committee meetings subject to restrictions which may be imposed by the President or the head of any agency to which an advisory committee reports. Such restrictions may be imposed after it is determined that an advisory committee meeting is concerned with matters listed in section 552(b) of title 5, United States Code. The conference substitute also provides that subject to section 552 of title 5, United States Code, the records and other papers of advisory committees shall be available for public inspection and copying.

The conference substitute requires that each advisory committee keep detailed minutes of its meetings.

The conference substitute requires that a designated officer or employee of the Government attend each advisory committee meeting. No such meeting may be conducted in his absence or without his approval. Except in the case of Presidential advisory committees the agenda of such meeting must be approved by him.

11. AVAILABILITY OF TRANSCRIPTS

The Senate amendment provided that agencies and advisory committees should make any transcripts of their proceedings or meetings available to the public at actual cost of duplication. The House bill contained no comparable provision. The conference substitute adopts the Senate amendment with modification.

12. COLLECTION OF INFORMATION

The Senate amendment contained a provision relating to procedures followed by the Office of Management and Budget in carrying out its duties under the Federal Reports Act. The House bill contained no such provision.

The conference substitute contains no provision on this subject.

13. FISCAL AND ADMINISTRATIVE PROVISIONS

The Senate amendment and the House bill differ slightly regarding the requirement that records be kept concerning the disposition of funds and the nature and extent of activities of advisory committees. The conference substitute provides that each agency shall keep finan-

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cial and other records regarding the advisory committees under its jurisdiction and that either the General Services Administration or such agency as the President may designate shall maintain financial records of Presidential advisory committees.

The conference substitute adopts the provision of the Senate amendment concerning support services for advisory committees.

14. RESPONSIBILITIES OF THE LIBRARY OF CONGRESS

The Senate amendment and the House bill differed with respect to the responsibilities of the Library of Congress as a depository of the reports and other materials of advisory committees. The conference substitute adopts the House bill with modifications.

15. TERMINATION OF ADVISORY COMMITTEES

The Senate amendment differed from the House bill in that it provided for the termination of advisory committees created by Act of Congress before the effective date of the bill and further differed in that it provided for the termination of all advisory committees not later than December 31, 1973. The House bill provided for the termination of all advisory committees, other than those created by Act of Congress before the date of enactment of the bill, within two years after the effective date of the bill.

The conference substitute adopts the Senate amendment with modifications. An important modification to the Senate amendment is the substitution of a termination date which occurs two years after the effective date of the bill.

16. EFFECTIVE DATE

The Senate amendment and the House bill differed slightly with respect to effective date. The conference substitute adopts the Senate amendment with modifications.

CHET HOLIFIELD,
JOHN S. MONAGAN,
DANTE B. FASCELL,
SAM STEIGER,
GARRY BROWN,

Managers on the Part of the House.

EDMUND S. MUSKIE,
HUBERT H. HUMPHREY,
LAWTON CHILES,
LEE METCALF,
CHARLES PERCY,
W. V. ROTH, Jr.,
BILL BROCK,

Managers on the Part of the Senate.