United States
**Office of Government Ethics**
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 10, 2009

The Honorable Edolphus Towns
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Towns:

This is to advise you of the concerns of the Office of Government Ethics (OGE) regarding H.R.1320, a bill to amend the Federal Advisory Committee Act (FACA), as introduced in the House of Representatives on March 5, 2009. The Administration is currently reviewing the bill as a whole and intends to detail other Administration concerns to be conveyed at a later date.

OGE has fundamental concerns that the bill: (1) establishes new requirements for special Government employees (SGEs) that overlap and duplicate existing conflict-of-interest provisions and; (2) imposes conflict-of-interest requirements on "representative" members of Federal Advisory Committees who, by design, are expected to represent particular interests and are therefore not appropriate subjects for OGE regulation.

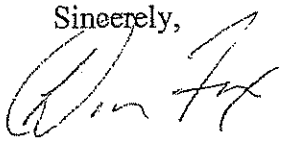
First, the bill would impose an unnecessary layer of conflict-of-interest requirements on Federal Advisory Committee members who are SGEs. These are persons appointed to Federal Advisory Committees because of their individual expertise and who are already subject to a wide range of ethical requirements. Section 2(b) of the bill would prohibit agencies from appointing SGEs if they have a "conflict of interest" unless the agency finds the conflict outweighed by the need for their services. It also requires SGEs to report any conflicts of interest to the agency. Section 2(c) then requires OGE to issue regulations defining "conflict of interest" and specifying the method for SGEs to disclose those conflicts. In light of the fact that SGEs are already subject to the criminal conflict-of-interest laws, the financial disclosure requirements of the Ethics in Government Act, and the existing OGE ethics regulations, OGE believes that the current regime to evaluate and resolve conflicts of interests for SGEs is adequate and does not believe that a need for change has been demonstrated. See http://www.usoge.gov/pages/advisory_opinions/advop_files/2000/00x1.html (outlining all the restrictions currently applicable).

Second, the bill would impose a set of conflict-of-interest requirements on so-called "representative" members of advisory committees by requiring the Government to evaluate the extent to which a representative member's personal interests may conflict with the perceived interests of the group he or she is appointed to represent. Representative members are not SGEs and, accordingly, are not subject to the direction and discipline of the Government. Moreover, unlike SGEs who are appointed because of their individual expertise, representative members are appointed solely to represent the interests of particular groups from outside the Government and are not expected to be disinterested parties. The Government lacks the ability to meaningfully assess the extent to which a representative member's personal interests may conflict with the perceived interests of constituents of the represented group. In addition, there are existing safeguards under FACA against committee-wide bias. These safeguards include requiring disclosure of whether a member is a representative member and requiring a balance of viewpoints on the advisory committee.

The bill would require OGE, or an executive branch agency, to articulate standards in the abstract that would prohibit certain conflicts for representative members, yet still permit those members to function effectively in the representative role envisioned by the Act. This is an all-but-impossible task, as any particular interest might be viewed as a conflict by one group and not a conflict by another. Regulations that precluded all possible conflicts for representative members would effectively eliminate the very concept of representative members. For these reasons, OGE believes the bill would add complexity and administrative burden to the ethics regime for both SGEs and "representative" members, but not enhance existing conflict-of-interest laws and regulations.

The Administration is strongly committed to transparency and collaboration and is currently studying potential ways to modernize and reform FACA so that it furthers these goals even more effectively. The Office of Management and Budget has advised OGE that, from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,



Don W. Fox
General Counsel

cc The Honorable Darrel Issa
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
B-350A Rayburn House Office Building
Washington, DC 20515-6143