



CRS Report for Congress

Congressional Advisory Commissions: An Overview

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Summary

A congressional advisory commission is a formal group often established for the purpose of obtaining advice, developing recommendations on complex policy issues, or finding solutions to contentious problems. Congressional commissions are usually established by statute, typically involve Members of Congress in the appointment process (either through direct service on the commission or by appointing or recommending candidates), and deliver their work product to Congress, often in the form of recommendations for legislative action.

Most congressional commissions are temporary bodies that study particular policy problems or investigate events (policy commissions) and report their findings to Congress. Congress also occasionally creates commissions that commemorate a person or event, oversee ongoing functions of Congress, or serve diplomatic or interparliamentary functions.

This report provides an overview of congressional advisory commissions and the general statutory structure of a congressional policy commission. For additional information, see CRS Report RL33313, *Congressional Commissions, Committees, Boards, and Groups: Appointment Authority and Membership*, by Matthew E. Glassman.

Overview of Advisory Commissions

An advisory commission is a formal group often established for the general purpose of obtaining advice, developing recommendations on complex policy issues, or finding solutions to contentious problems.¹ By virtue of their ad hoc status, such advisory commissions can circumvent normal bureaucratic constraints to provide diverse points of view in matters of public policy within a definite time frame. The bipartisan or nonpartisan arrangement of most advisory commissions can give their recommendations

¹ Colton Campbell, "Creating an Angel: Congressional Delegation to Ad Hoc Commissions," *Congress and the Presidency*, vol. 25, no. 2 (Autumn 1998), p. 161.

strong public credibility, even when dealing with divisive issues of public policy. Unlike regulatory commissions, advisory commissions are not typically granted administrative authority, and they usually lack the power to implement their findings or recommendations. Instead, advisory commissions typically produce reports that present their findings and offer recommendations for action.

Congressional commissions are usually established by statute, typically involve Members of Congress in the appointment process (either through direct service on the commission or by appointing or recommending candidates), and deliver their work product to Congress, often in the form of recommendations for legislative action.² Commissions created in the executive branch are established by statute, executive order, or agency authority, and submit their work products to either the President or other executive branch officials.

While commissions established in the executive branch are subject to the Federal Advisory Committee Act (FACA), which governs their creation, administration, and management,³ congressional commissions are not specifically bound by the requirements set forth in FACA. Because many commissions involve both congressional and presidential participation, statutes creating congressional commissions will sometimes incorporate explicit statutory language exempting the commission from FACA requirements either in whole or in part. Despite exemption from FACA — whether implied or expressed — legislators usually apply similar guidelines to congressional commissions in their establishment legislation.

If one considers all congressional commissions, they generally fall into one of four categories. Most congressional commissions study particular policy problems or investigate events (policy commissions) and report their findings to Congress. Less common are commissions that commemorate a person or event (commemorative commissions). Policy and commemorative commissions are often — although not always — temporary in nature. Congress has also created a number of commissions that oversee ongoing functions of Congress (operations commissions) or serve diplomatic or interparliamentary functions (interparliamentary commissions). These commissions differ from policy or commemorative commissions in that they typically are created to serve ongoing functions, often have administrative authority, and usually do not have statutory termination dates.

The remainder of this report focuses on the statutory structure of congressional policy commissions. It does not cover the structure of commemorative, operations, or interparliamentary commissions.

Statute Structure

Statutes establishing congressional policy commissions generally include language that states the mandate of the commission, provides a membership structure and

² Some commissions created by statute involve both Congress and the President in the appointment process and deliver reports to both Congress and the President. These hybrid commissions are also generally considered congressional commissions.

³ 5 U.S.C. Appendix; 86 Stat. 770.

appointment scheme, defines member compensation and other benefits, outlines the commission's duties and powers, authorizes funding, and sets a termination date for the commission. Additionally, some statutes include explicit language exempting the commission from FACA.

A wide variety of options are available for each of these organizational choices. Legislators can tailor the composition, organization, and working arrangements of a commission, based on the particular goals of Congress. As a result, individual congressional commissions often have an organizational structure and powers quite different from one another.

Establishment and Mandate. A commission's establishment is generally prescribed in a brief introductory paragraph. The proposed Commission on Catastrophic Disaster Risk and Insurance was established with a single sentence:

There is established a bipartisan Commission on Catastrophic Disaster Risk and Insurance.⁴

A bill creating a commission will sometimes provide congressional "findings" identifying the conditions justifying the creation of the panel. The bill proposing the Commission on Catastrophic Disaster Risk and Insurance includes seven specific findings related to hurricane damage and the federal government's role in catastrophe management. In other cases, legislation creating a congressional commission may simply include a short "purpose" section describing the justification for the creation of the commission, in lieu of "findings."

Membership. Congressional commissions use a wide variety of membership schemes and appointment structures. The statutory scheme may require that membership of a commission be made up in whole or in part of specifically designated Members of Congress, typically Members in congressional or committee leadership positions. In other cases, selected leaders, often with balance between the parties, appoint commission members, who may or may not be Members of Congress. A third common statutory scheme is to have selected leaders, again often with balance between the parties, recommend members, who may or may not be Members of Congress, for appointment to a commission. These leaders may act either in parallel or jointly, and the recommendation may be made either to other congressional leaders, such as the Speaker of the House and President pro tempore of the Senate, or to the President.

Some statutory provisions may have the effect of limiting the degree of autonomy a Member has in appointing or making recommendations of individuals for commission membership. For example, statutory language may require the appointing official to select members who are specifically qualified by virtue of their education, knowledge, training, experience, expertise, distinguished service, or recognized eminence in a particular field or fields.⁵

⁴ Sec. 3, H.R. 537 (110th Congress).

⁵ For example, P.L. 109-58 prescribes that nominees for the United States Commission on North American Energy Freedom must be "knowledgeable on energy issues, including oil and gas (continued...)"

Compensation and Travel Expenses. Most statutorily created congressional commissions do not compensate their members, except to reimburse members for expenses directly related to their service, such as travel costs. For example, Section 201(i) of the statute establishing the United States Commission on International Religious freedom⁶ reads

(i) Funding. — Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

Among congressional commissions that compensate their members, the level of compensation is almost always specified statutorily, and is typically set in accordance with one of the federal pay scales, prorated to the number of days of service. The most common level of compensation is the daily equivalent of Level IV of the Executive Schedule (EX), which has a basic annual rate of pay of \$145,400⁷ in 2007.⁸ For example, the statute establishing the Antitrust Modernization Commission⁹ states

(a) Pay. —

(1) Nongovernment employees. — Each member of the Commission who is not otherwise employed by a government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5 United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) Government employees. — A member of the Commission who is an officer or employee of a government shall serve without additional pay (or benefits in the nature of compensation) for service as a member of the Commission.

(b) Travel Expenses. — Members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

Alternatively, members of some congressional commissions are compensated a specific dollar amount that is set in statute.

⁵ (...continued)

exploration and production, crude oil refining, oil and gas pipelines, electricity production and transmission, coal, unconventional hydrocarbon resources, fuel cells, motor vehicle power systems, nuclear energy, renewable energy, biofuels, energy efficiency, and energy conservation.”

⁶ P.L. 105-292; 112 Stat. 2787, 2798 (10/27/1998).

⁷ [<http://www.opm.gov/oca/07tables/pdf/ex.pdf>].

⁸ Although Level IV of the Executive Schedule is the most common compensation level, several congressional commissions are compensated on other levels of the Executive Schedule or at particular levels of the General Schedule. Members of congressional commissions that fall under the Federal Advisory Committee Act (P.L. 92-463) are prohibited from receiving compensation in excess of the rate specified for Executive Schedule Level IV.

⁹ P.L. 107-273; 116 Stat. 1758,1858-1858 (11/2/2002).

Commission Staffing. Congressional commissions created to study a policy problem or conduct an investigation are usually authorized to hire a staff. Many of these commissions are specifically authorized to appoint a staff director and other personnel as necessary. The size of the staff is not generally specified, allowing the commission flexibility in judging its own staffing requirements. Typically, maximum pay rates will be specified, but the commission will be granted authority to set actual pay rates within those guidelines.

Most of these congressional commissions are also authorized to hire consultants and procure intermittent services. Many commissions are statutorily authorized to request that federal agencies detail personnel to assist the commission.

Duties and Reports. Congressional commissions are usually statutorily directed to carry out specific tasks. These can include studying a problem, fact-finding, assessing conditions, conducting an investigation, reviewing policy proposals, crafting recommendations, and making feasibility determinations. For example, the proposed Commission on Catastrophic Disaster Risk and Insurance is directed to

assess the condition of the property and casualty insurance and reinsurance markets in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005, and the 4 major hurricanes that struck the United States in 2004; and the ongoing exposure of the United States to windstorms, earthquakes, volcanic eruptions, tsunamis, and floods; and recommend and report ... any necessary legislative and regulatory changes that will improve the domestic and international financial health and competitiveness of such markets; and assure consumers of availability of adequate insurance coverage when an insured event occurs.¹⁰

Most commissions are required to produce an interim, annual, or final report for transmittal to Congress, and sometimes to the President or executive department or agency heads, usually within a specified period of time. A commission may also be authorized to issue other recommendations it considers appropriate.

Since the recommendations contained in a commission report are only advisory, no changes in public policy occur on the authority of a congressional commission. The implementation of such recommendations is dependent upon future congressional or executive branch action.

Commission Powers. Most congressional commissions are directed to hold public meetings to discuss commission matters, usually at the call of the chair or the majority of the commission. In addition, most of these congressional commissions are statutorily empowered to hold fact-finding hearings and take testimony from witnesses.

Commissions are often empowered to subpoena witnesses. For example, the proposed Hurricane Katrina Disaster Inquiry Commission¹¹ is authorized to issue subpoenas by agreement of the chair and vice chair, or by the affirmative vote of eight

¹⁰ Sec. 5, H.R. 537 (110th Congress).

¹¹ H.R. 265 (110th Congress).

commission members.¹² Additional statutory language provides for the enforcement of the subpoenas in federal court.

Some commissions are empowered to secure information from federal agencies. For example, the Hurricane Katrina Disaster Inquiry Commission is authorized to

secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the government, information, suggestions, estimates, and statistics ... [e]ach department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information ... upon request made by the chairman.¹³

In addition, Congress occasionally directs specific executive branch agencies to assist a commission in the completion of its work.

Commission Funding. Congressional commission costs vary widely, ranging from several hundred thousand dollars to over \$10 million dollars. Overall expenses for any individual commission are dependent on a variety of factors, the most important of which are the number of paid staff and duration of the commission. Many commissions have few or no full-time staff; others employ large numbers, such as the National Commission on Terrorist Attacks Upon the United States,¹⁴ which had a full-time paid staff of 80. Additionally, some commissions provide compensation to members; others only reimburse members for travel expenses. Many commissions finish their work and terminate within a year of creation; in other cases work may not be completed for several years.

Secondary factors that can affect commission costs include the number of commissioners, how often the commission meets or holds hearings, and the number and size of publications the commission produces. Although congressional commissions are primarily funded through congressional appropriations, many commissions are statutorily authorized to accept donations of money and volunteer labor, which may offset costs.

Commission Termination. Congressional commissions are usually statutorily mandated to terminate. Termination dates for most commissions are linked to either a fixed period of time after the establishment of the commission, the selection of members, or the date of submission of the commission's final report. Alternatively, some commissions are given fixed calendar termination dates.

¹² Sec. 6(a)(2), H.R. 265 (110th Congress).

¹³ Sec. 6(c), H.R. 265 (110th Congress).

¹⁴ P.L. 107-306; 116 Stat. 2408.