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# Designing Congressional Commissions: Background and Considerations for Congress

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## Designing Congressional Commissions: Background and Considerations for Congress

Congressional advisory commissions are temporary entities established by Congress to provide advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty. Generally, commissions may hold hearings, conduct research, analyze data, investigate policy areas, and/or make field visits as they perform their duties. Most complete their work by delivering their findings, recommendations, or advice in the form of a written report to Congress.

Advisory commission legislation generally has specific features that provide the commission with the authorities and resources necessary to complete its mission. Using a dataset of statutorily authorized congressional commissions from the 101<sup>st</sup> Congress (1989-1990) to the 116<sup>th</sup> Congress (2019-2020), this report focuses on the legislative language used to establish congressional commissions.

Policymakers face a number of choices when designing a commission. Statutes establishing congressional commissions commonly provide a series of deadlines that outline the commission's statutory lifecycle, including deadlines for appointment of commissioners, the commission's initial meeting, the submission of a final report and any interim reports, and the commission's termination. Additionally, commission statutes frequently include sections that establish the commission and state its mandate; provide a membership structure and authority for making appointments; outline the commission's duties; grant the commission certain powers; define any rules of procedure; address hiring of commission staff; and prescribe how the commission will be funded.

Congress has a variety of options available for each of these decisions. This report discusses the above-listed topics, along with issues relevant to each. Legislators can tailor the composition, organization, and working arrangements of a commission based on particular congressional goals. This report provides illustrative examples of statutory language for these topics, discusses potential alternative approaches, and analyzes possible advantages or disadvantages of different choices in commission design. The report focuses on congressional commissions created by statute and does not address entities created by the President or other nonstatutory advisory bodies.

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## Introduction

Congressional commissions are entities established by Congress to provide advice, make recommendations for changes in public policy, study or investigate a particular problem or event, or perform a specific duty.<sup>1</sup> Generally, commissions may hold hearings, conduct research, analyze data, investigate policy areas, and/or make field visits as they perform their duties. Most commissions complete their work by delivering their findings, recommendations, or advice in the form of a written report to Congress. For example, Congress created the National Commission on Terrorist Attacks Upon the United States to “examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001,” and to “investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.”<sup>2</sup> The commission ultimately submitted a final report to Congress and the President containing its findings and conclusions, along with numerous policy recommendations.<sup>3</sup>

This report begins by examining the statutory lifecycle of congressional commissions, including common deadlines that define major milestones and mandate certain commission activities. Next, the report describes the language commonly found in commission legislation, including commission establishment, appointments, duties, powers, rules and procedures, staff, and funding. This report also provides illustrative examples of statutory language, discusses different approaches used in previous commission statutes, and analyzes possible advantages or disadvantages of different choices in commission design.

This report focuses on congressional commissions created by statute and does not address entities created by the President or other nonstatutory advisory bodies.<sup>4</sup>

## Cataloging Congressional Commissions

While no formal definition exists, for the purposes of this report a congressional commission is defined as a multimember independent entity that (1) is established by Congress, (2) exists temporarily, (3) serves in an advisory capacity, (4) is appointed in part or whole by Members of Congress, and (5) reports to Congress. This definition differentiates a congressional commission from a presidential commission, an executive branch commission, or other bodies with “commission” in their names, while including most entities that fulfill the role commonly associated with commissions—studying policy problems and reporting findings to Congress.

This report analyzes statutory language used between the 101<sup>st</sup> Congress (1989-1990) and the 116<sup>th</sup> Congress (2019-2020) to establish congressional commissions. To identify commissions established during this period, a Congress.gov database search was performed for enacted legislation between the 101<sup>st</sup> Congress and the 116<sup>th</sup> Congress.<sup>5</sup> CRS examined each piece of

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<sup>1</sup> For an overview of congressional commissions, see CRS Report R40076, *Congressional Commissions: Overview and Considerations for Congress*, by Jacob R. Straus.

<sup>2</sup> P.L. 107-306, §602, 116 Stat. 2408 (2002).

<sup>3</sup> The 9/11 Commission report is publicly available and can be accessed at [https://govinfo.library.unt.edu/911/report/911Report\\_Exec.pdf](https://govinfo.library.unt.edu/911/report/911Report_Exec.pdf).

<sup>4</sup> For additional information on commissions covered by the Federal Advisory Committee Act, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy.

<sup>5</sup> CRS conducted the search in two iterations. The first search used the subject term “Federal Advisory Bodies.” The second search used a variety of search terms, including “commission,” “board,” “task force,” and “advisory

legislation returned by the search to determine if (1) the legislation established a commission, and (2) the commission was a congressional commission as defined by the five criteria above. If the commission met the criteria, its name, public law number, *Statutes-at-Large* citation, and date of enactment were recorded. This approach identified 168 congressional commissions established by statute since 1989.<sup>6</sup>

## Statutory Lifecycle of Congressional Commissions

A congressional commission's statute commonly provides a series of deadlines that define its major lifecycle milestones. The overall amount of time provided to a commission may vary substantially depending on how deadlines are constructed.

Although the number and type of deadlines provided to commissions may vary, the most common statutory deadlines are for

- the appointment of the commission members;
- the commission's first meeting;
- submission of any interim/initial report(s) that may be required;
- submission of the commission's final work product(s); and
- termination.

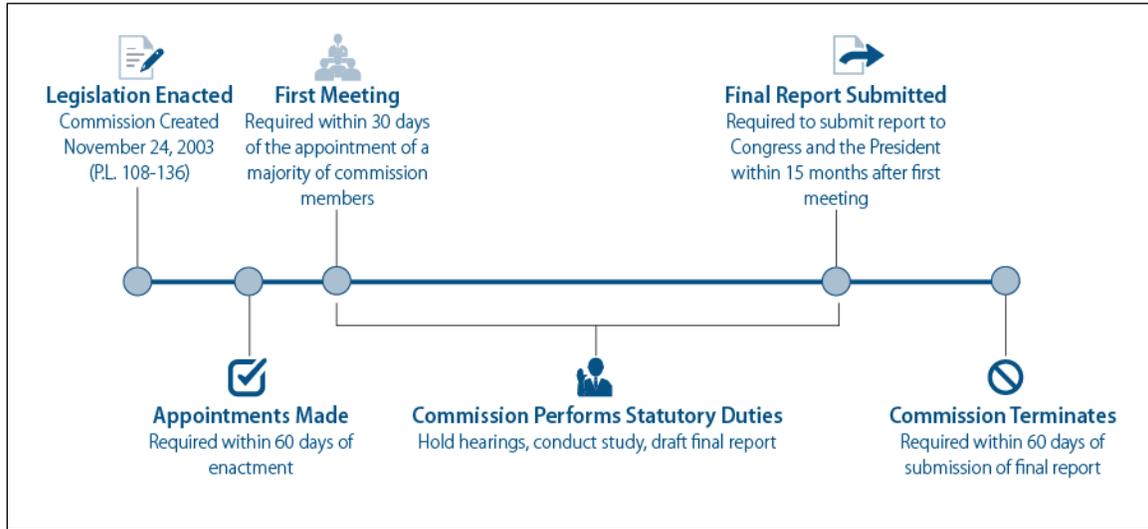
For example, **Figure 1** visualizes the amount of time statutorily provided to a commission to complete its tasks. Using the Veterans' Disability Benefits Commission as an example, **Figure 1** shows the commission's statutory deadlines for commissioner appointment, first meeting, issuance of its final report, and termination. The Veterans' Disability Benefits Commission did not issue an interim report.

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committee.”

<sup>6</sup> For more information on congressional advisory commissions and for a list of commissions, see CRS Report R40076, *Congressional Commissions: Overview and Considerations for Congress*, by Jacob R. Straus.

**Figure 1. Example of the Statutory Lifecycle of a Congressional Commission**  
Veterans' Disability Benefits Commission



Source: CRS analysis of P.L. 108-136, §§1501-1507, 117 Stat. 1676 (2003).

## Deadline for Appointments

Commission statutes commonly contain an appointment deadline for commission members. As shown in **Figure 1**, for example, the statute establishing the Veterans' Disability Benefits Commission provided for the appointment within 60 days of enactment.

In most cases, appointments are required to be made within some specific period following enactment.<sup>7</sup> A smaller number of statutes tie appointment deadlines to the commission receiving appropriations. For example, appointments to the National Commission on Manufactured Housing were required to be made “not later than 60 days after funds are provided” for the commission.<sup>8</sup>

## Deadline for First Meeting

Approximately half of commission statutes direct a particular time limit for the commission to hold its first meeting. As displayed in **Figure 1**, the Veterans' Disability Benefits Commission's statute instructed it to hold an initial meeting within 30 days of the appointment of a majority of its members. Similar to appointment deadlines, statutes commonly tie deadlines for initial meetings to another event. Most often, the first meeting is required to occur within some period

<sup>7</sup> For commissions established since the 101<sup>st</sup> Congress, the amount of time provided for appointments has ranged from 15 days to 18 months. For example, the Task Force on Economic Development in Puerto Rico (P.L. 114-187) required appointments within 15 days, while the Risk Assessment and Management Commission (P.L. 101-549) required appointments within 18 months.

<sup>8</sup> P.L. 101-625, §943(c)(1), 104 Stat. 4413 (1990).

following the enactment of the legislation or appointment of commission members (the appointment of all members,<sup>9</sup> a majority of members,<sup>10</sup> or some other number of members).<sup>11</sup>

## **Deadline for Final Report**

Nearly all commission statutes include a deadline for final report submission. The amount of time provided for final report submission varies substantially. Some commissions, such as the National Commission on the Cost of Higher Education, were given less than six months to submit their final reports to Congress.<sup>12</sup> Other commissions, such as the Antitrust Modernization Commission, had three or more years to complete their work products.<sup>13</sup> The Veterans' Disability Benefits Commission was provided 15 months from its initial meeting to submit a final report, as shown in **Figure 1**.

The deadline for a commission's final report may be measured from different starting points. Most commission statutes tied the deadline for final report submission to one of the following events:

- the date of the commission's first meeting;
- enactment of legislation creating the commission;
- appointment of commission members; or
- a specific calendar date.<sup>14</sup>

The overall length of time granted to a congressional commission for the completion of its final work product is arguably one of the most important decisions when designing a commission. If the commission is given a short amount of time, the quality of its work product may suffer or the commission may not be able to fulfill its statutory mandate. Policymakers may also wish to consider the amount of time necessary for "standing up" a new commission; the appointment of commission members, recruitment of staff, arrangement of office space, and other logistical matters may require six months or more from the date of enactment of commission legislation.

On the other hand, longer deadlines may undercut one of the primary goals of a commission: the timely production of expert advice on a current policy matter. If legislators seek to create a commission to expeditiously address a pressing policy problem, a short deadline may be appropriate. Shorter deadlines could also conceivably reduce a commission's overall cost.

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<sup>9</sup> See, for example, the Commission on the Abolition of the Transatlantic Slave Trade (P.L. 110-183, §4(a)(4)(B), 122 Stat. 608, 2008).

<sup>10</sup> See, for example, the Commission to Eliminate Child Abuse and Neglect Fatalities (P.L. 112-275, §3(d), 126 Stat. 2462, 2013).

<sup>11</sup> See, for example, the Commission on Care (P.L. 113-146, §202(a)(4), 128 Stat. 1774, 2014).

<sup>12</sup> P.L. 105-18, §40004(b), 111 Stat. 209 (1997).

<sup>13</sup> P.L. 107-273, §11058, 116 Stat. 1859 (2002).

<sup>14</sup> Other, less common arrangements include tying the deadline for submission of a final report to the selection of a chairperson (see the National Commission on Financial Institution Reform, Recovery, and Enforcement; P.L. 101-647, §2556(a), 104 Stat. 4892 (1990)), or the submission of an interim report (see the Foreign Intelligence and Information Commission; P.L. 111-259, §606(a)(2), 124 Stat. 2744, (2010)). A small number of commissions were not provided a final report deadline.

## Deadline for Commission Termination

Congressional commissions are usually statutorily mandated to terminate. As with other statutory deadlines, termination dates for most commissions are usually linked to either the date of the enactment of the commission statute, the selection of members, or the submission of the commission's final report. A smaller number of commission statutes establish a specific calendar date as the deadline for termination. As shown in **Figure 1**, the Veterans' Disability Benefits Commission was instructed to terminate 60 days after the submission of its final report.<sup>15</sup>

## Linking Deadlines to Specific Events

Statutory deadlines can help ensure that activities occur within a desired timeframe. However, the amount of time provided to a commission to perform any particular activity depends on how the particular deadline is established.

While a calendar date deadline for particular commission action may be established, commission deadlines are more commonly tied to some other event in the commission's lifecycle, such as enactment, appointment of commissioners, first commission meeting, or issuance of a final report. The decision to specify a particular calendar date as a deadline, or to tie the deadline to another event, can have a significant effect on the time provided to the commission to carry out its functions.

For instance, legislation requiring a commission to produce a final report by a specific calendar date may ensure delivery of the report at a predictable time. However, the actual amount of time the commission will have to create the report will differ depending on a variety of factors, including the date the legislation is enacted, or the time needed to appoint commission members, hire commission staff, and hold a first meeting. If a commission must submit a report by a specified calendar date, any delays (including in the enactment of the legislation, or "standing up" the commission) would have the practical effect of reducing the amount of time provided to the commission to perform its duties. Linking the final report deadline to a flexible date, such as the first meeting or the appointment of members, will often provide a more predictable amount of time for the commission to complete its work. Tying a commission's final report to a flexible date, however, may delay the actual calendar submission date for the final report.

## Commission Structure

Policymakers face a number of choices when designing a commission. Commission statutes frequently include sections that

- establish the commission and state its mandate;
- provide a membership structure and authority for making appointments;
- outline the commission's duties;
- grant the commission certain powers;
- define any rules of procedure;
- address hiring of commission staff; and
- prescribe how the commission will be funded.

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<sup>15</sup> P.L. 109-58, §1423(h), 119 Stat. 1067 (2005).

The following sections discuss these commission legislation components. Legislators can tailor the proposed commission’s composition, organization, and working arrangements based on particular congressional goals. The following sections provide illustrative examples of statutory language, discuss potential alternative approaches, and analyze possible advantages or disadvantages of commission choices.

## **Establishment and Mandate**

Commission legislation generally begins with a brief introductory paragraph, often with a single sentence. For instance, the Western Hemisphere Drug Policy Commission’s legislation stated:

There is established an independent commission to be known as the “Western Hemisphere Drug Policy Commission” (in this title referred to as the “Commission”).<sup>16</sup>

In some instances, this section will further specify that the commission is “established in the legislative branch.” This can potentially resolve confusion about the commission’s administrative location, especially if it is a hybrid commission—with members appointed by both legislative and executive branch officials. For commissions not specifically established in the legislative or executive branch, the manner in which the members of the commission are appointed may help determine the commission’s legal status.<sup>17</sup> A commission with a majority of appointments made by the President may be treated as an executive branch entity for certain purposes. If Members of Congress make a majority of appointments, it may be treated as a legislative branch entity.

Some commission bills will provide congressional “findings” that demonstrate congressional intent and provide a justification for creating the panel. For example, the National Gambling Impact Study Commission’s statute included five specific findings. It stated:

The Congress finds that—

- (1) the most recent Federal study of gambling in the United States was completed in 1976;
- (2) legalization of gambling has increased substantially over the past 20 years, and State, local, and Native American tribal governments have established gambling as a source of jobs and additional revenue;
- (3) the growth of various forms of gambling, including electronic gambling and gambling over the Internet, could affect interstate and international matters under the jurisdiction of the Federal Government;
- (4) questions have been raised regarding the social and economic impacts of gambling, and Federal, State, local, and Native American tribal governments lack recent, comprehensive information regarding those impacts; and
- (5) a Federal commission should be established to conduct a comprehensive study of the social and economic impacts of gambling in the United States.<sup>18</sup>

In other cases, legislation creating commissions may simply include a short “purpose” section describing the justification for the commission, in lieu of a longer “findings” section. For

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<sup>16</sup> P.L. 114-323, §601, 130 Stat. 1936 (2016).

<sup>17</sup> Office of Legal Counsel, Department of Justice. “Applicability of 18 U.S.C. §208 to National Gambling Impact Study Commission,” Memorandum for the Acting General Counsel, General Services Administration, January 26, 1999, at [https://www.justice.gov/sites/default/files/olc/opinions/1999/01/31/op-olc-v023-p0029\\_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/1999/01/31/op-olc-v023-p0029_0.pdf).

<sup>18</sup> P.L. 104-169, §2, 110 Stat. 1482 (1996).

example, the United States Commission on North American Energy Freedom’s statute included a statutory purpose. It states:

The purpose of this subtitle is to establish a United States commission to make recommendations for a coordinated and comprehensive North American energy policy that will achieve energy self-sufficiency by 2025 within the three contiguous North American nation area of Canada, Mexico, and the United States.<sup>19</sup>

## **Commission Membership**

Advisory commissions can have a variety of membership structures. Commission designers commonly face decisions that involve how many members the commission should have, how members will be appointed, whether to require a deadline for making appointments, whether to require that members possess particular qualifications, whether to require a particular partisan balance, how to address terms and vacancies, and whether (or how much) to compensate commission members.

### **Size**

The number of members who statutorily serve on congressional commissions varies significantly. Of the commissions analyzed, the smallest commission had 5 members and the largest had 33 members.

Larger commissions have the potential advantage of surveying a wider range of viewpoints, arguably allowing the commission to produce a more comprehensive final report. A large commission may also aid the chances of legislative success of any policy recommendations a commission must make, especially if the size allows for a greater number of interests to be represented through the commission appointment process. Small commissions, however, likely enjoy efficiency advantages in coordination, completing work products, and conducting hearings and meetings. In addition, overall commission costs may be lower for small commissions, particularly if commission members receive compensation. Smaller commissions may also incur fewer travel and other expenses.

### **Appointment Methods**

Congress has structured commission appointments in a variety of ways. Generally, congressional leaders have the authority to recommend, appoint, or serve as a member of a commission. Most often, appointments are made through some combination of methods, including the following:

- Congressional leaders, committee leaders, the President, or Cabinet officials directly appoint commission members.
- Selected officials provide recommendations to, consult with, or jointly make appointments with other selected officials.<sup>20</sup>
- The commission statute designates individuals holding specific positions as commission members.

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<sup>19</sup> P.L. 109-58, §1422, 119 Stat. 1064 (2005).

<sup>20</sup> This category encompasses a range of statutory frameworks. For instance, appointments may be made by an official “in consultation” with another official, “upon the recommendation” of another official, based upon nominations made by another official, or jointly with another official.

**Table 1** contains examples of each of the aforementioned appointment methods. The first entry in **Table 1**, the Commission on the Abolition of the Transatlantic Slave Trade, demonstrates the most common type of appointment method found in commission statutes—commission members appointed by selected leaders. The example in **Table 1** shows congressional appointments, but appointments have also been made by noncongressional officials, including the President,<sup>21</sup> Cabinet secretaries,<sup>22</sup> the Chief Justice of the Supreme Court,<sup>23</sup> and state officials,<sup>24</sup> among others.

The second entry in **Table 1**, the Commission on Wartime Contracting, shows another common method of appointment—commission members appointed by selected officials, in concert with other officials. In this instance, Members of House and Senate leadership were required to consult with relevant House or Senate committee chairs, while the President was required to consult with the Secretary of Defense and Secretary of State prior to making appointments.

The third example in **Table 1**, the Thomas Jefferson Commemoration Commission, shows a somewhat less common appointment structure—direct designation of specified officials. The statute designated 10 specific officials to serve on the commission. The statute directly named the Chief Justice of the Supreme Court, the Librarian of Congress, the Archivist of the United States, and selected congressional leaders, among others, to the commission. In each case, the named official could appoint a delegate to serve in their place.

**Table 1. Selected Examples of Statutory Establishment of Commission Appointment Authority**

Commission Name and Citation	Statutory Language Related to Appointment Authority
Commission on the Abolition of the Transatlantic Slave Trade P.L. 110-183, §4, 112 Stat. 607 (2008)	The Commission shall be composed of nine members, of whom— (i) three shall be appointed by the Speaker of the House of Representatives; (ii) two shall be appointed by the majority leader of the Senate; (iii) two shall be appointed by the minority leader of the House of Representatives; and (iv) two shall be appointed by the minority leader of the Senate.

<sup>21</sup> See, for example, the Commission on Evidence-Based Policymaking (P.L. 114-140, §3(a)(1), 130 Stat. 317 (2016)).

<sup>22</sup> See, for example, the Commission on the National Guard and Reserves (P.L. 108-375, §513(b)(1)(E), 118 Stat. 1880 (2004)).

<sup>23</sup> See, for example, the National Commission on Judicial Impeachment (P.L. 101-650, §411(a)(3), 104 Stat. 5125 (1990)).

<sup>24</sup> See, for example, the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives (P.L. 101-379, §12(b)(2)(A), 104 Stat. 478 (1990)).

<b>Commission Name and Citation</b>	<b>Statutory Language Related to Appointment Authority</b>
Commission on Wartime Contracting P.L. 110-181, §841(b), 112 Stat. 231 (2008)	<p>The Commission shall be composed of 8 members, as follows:</p> <p>(A) 2 members shall be appointed by the majority leader of the Senate, in consultation with the Chairmen of the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Foreign Relations of the Senate.</p> <p>(B) 2 members shall be appointed by the Speaker of the House of Representatives, in consultation with the Chairmen of the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Foreign Affairs of the House of Representatives.</p> <p>(C) 1 member shall be appointed by the minority leader of the Senate, in consultation with the Ranking Minority Members of the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Foreign Relations of the Senate.</p> <p>(D) 1 member shall be appointed by the minority leader of the House of Representatives, in consultation with the Ranking Minority Member of the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Foreign Affairs of the House of Representatives.</p> <p>(E) 2 members shall be appointed by the President, in consultation with the Secretary of Defense and the Secretary of State.</p>
Thomas Jefferson Commemoration Commission P.L. 102-343, §5, 106 Stat. 916 (1992)	<p>The Commission shall be composed of 21 members, including—</p> <p>(A) the Chief Justice of the United States or such individual's delegate;</p> <p>(B) the Librarian of Congress or such individual's delegate;</p> <p>(C) the Archivist of the United States or such individual's delegate;</p> <p>(D) the President pro tempore of the Senate or such individual's delegate;</p> <p>(E) the Speaker of the House of Representatives or such individual's delegate;</p> <p>(F) the Secretary of the Interior or such individual's delegate;</p> <p>(G) the Secretary of the Smithsonian Institution or such individual's delegate;</p> <p>(H) the Secretary of Education or such individual's delegate;</p> <p>(I) the Chairman of the National Endowment for the Humanities or such individual's delegate;</p> <p>(J) the Executive Director of the Thomas Jefferson Memorial Foundation or such individual's delegate; and</p> <p>(K) 11 citizens of the United States who are not officers or employees of any government, except to the extent they are considered such officers or employees by virtue of their membership of the Commission.</p> <p>...</p> <p>The individuals referred to in paragraph (I)(K) shall be appointed by the President.</p>

**Source:** CRS analysis of listed statutes.

Commission statutes may provide for appointments according to a single method or multiple methods. Similarly, appointment authority may be provided to a small number or a large number of selected leaders or officials. Providing appointment authority to a wider range of individuals may have the advantage of generating additional “buy-in” from selected leaders. On the other hand, providing appointment authority to a greater number of individuals may increase the potential for delays in completing the appointment process.

## Qualifications

Commission statutes may include qualifications or restrictions for appointments. Appointment qualifications may be designed to ensure that the commission includes subject-matter experts, represents particular groups, or includes a range of viewpoints.

Commission legislation frequently specifies that commissioners should possess certain substantive qualifications, such as experience in a particular field or expertise in a relevant policy matter. For example, the National Commission on the Future of the Army's statute provided appointment instructions. It said:

[i]n making appointments under this subsection, consideration should be given to individuals with expertise in national and international security policy and strategy, military forces capability, force structure design, organization, and employment, and reserve forces policy.<sup>25</sup>

In other cases, Congress may specify qualifications designed to ensure the representation of particular groups that are relevant to the commission's purpose. For instance, the statute establishing the Veterans' Disability Benefits Commission required the appointment of a certain number of decorated veterans,<sup>26</sup> and the statute establishing the Commission on Indian and Native Alaskan Health Care required the appointment of "[n]ot fewer than 10" Indians or Native Alaskans to serve on the commission.<sup>27</sup>

Congress may also specify qualifications to ensure that a commission contains a wide range of viewpoints. Congress may design a commission to review a policy issue that affects a variety of interests or economic sectors, and legislators may place qualifications on appointments to ensure representation of each interest. For instance, the statute creating the Motor Fuel Tax Enforcement Advisory Commission mandated the appointment of a certain number of individuals to represent the interests of highway construction, fuel distribution, state tax administration, state departments of transportation, and relevant federal agencies, among other interests.<sup>28</sup> Similarly, the act creating the Commission on Long-Term Care required the appointment of individuals from various health care sectors:

The membership of the Commission shall include individuals who—

(A) Represent the interests of—

- (i) Consumers of long-term services and supports and related insurance products, as well as their representatives;
- (ii) Older adults;
- (iii) Individuals with cognitive or functional limitations;
- (iv) Family caregivers for individuals described in clause (i), (ii), or (iii);
- (v) The health care workforce who directly provide long-term services and supports;
- (vi) Private long-term care insurance providers;
- (vii) Employers;

<sup>25</sup> P.L. 113-291, §1702(b)(4), 128 Stat. 3665 (2014).

<sup>26</sup> P.L. 108-136, §1501(b), 117 Stat. 1677 (2003).

<sup>27</sup> P.L. 106-310, §3307(b)(3), 114 Stat. 1216 (2000).

<sup>28</sup> P.L. 109-59, §11141(c)(1), 119 Stat. 1960 (2005).

- (viii) State insurance departments; and
- (ix) State Medicaid agencies;
- (B) Have demonstrated experience in dealing with issues related to long-term services and supports, health care policy, and public and private insurance; and
- (C) Represent the health care interests and needs of a variety of geographic areas and demographic groups.<sup>29</sup>

Appointment qualifications or restrictions may help ensure that the commission consists of genuine experts in a policy area, includes representatives of particular groups or sectors, or contains members with a wide range of viewpoints. This may help improve the commission's final work product, increase its stature and credibility, ensure that the desired range of voices can be heard during commission deliberations, or help obtain broader acceptance of the commission's recommendations or findings.

On the other hand, including appointment qualifications can have the effect of limiting the appointing authority's degree of autonomy. Additionally, the specificity of the language used to establish qualifications might affect whether the qualifications achieve the intended goal. If the qualifications language is too precise, certain individuals who might be valuable members of the commission may be excluded from consideration. Conversely, if qualification provisions are too vague, they may be difficult or impossible to enforce, and consequently less likely to meaningfully restrict the appointment of any potential candidate.

## **Partisan Balance**

Congress structures most congressional advisory commissions to be bipartisan. A small number of commissions were designed to have a perfectly even split between the parties. Typically, however, bipartisanship is accomplished by dividing commission appointment authority between Members of the majority and minority parties in the House and Senate. A smaller number of commission statutes ensure bipartisanship by detailing the partisan breakdown of individual commission members. For instance, the 12-member Commission on Servicemembers and Veterans Transition Assistance's statute specified that "[n]ot more than seven of the members of the Commission may be members of the same political party."<sup>30</sup> This approach, directly specifying or limiting the partisan composition of commission membership, is less common and likely more difficult to enforce; determining the political affiliation of some potential members may not be possible, as some may have no official affiliation with a party.

Bipartisan arrangements may make congressional commissions' findings and recommendations more politically balanced. A bipartisan membership may also lend additional credibility to a commission's recommendations, both within Congress and among the public. A commission that is perceived as partisan may have greater difficulty generating interest and support among the public and gathering the necessary support in Congress.

In some cases, bipartisanship may arguably impede a commission's ability to complete its mission. In situations where a commission is tasked with studying potentially controversial or partisan issues, the appointment of an equal number of commissioners by both parties may result in a situation where the commission's activities are stymied, with neither side able to garner a majority to take action.

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<sup>29</sup> P.L. 112-240, §643(c)(2), 126 Stat. 2360 (2013).

<sup>30</sup> P.L. 104-275, §701(b)(1)(C), 110 Stat. 3346 (1996).

## Terms and Vacancies

Because most advisory commissions are designed to last only for a set period of time, appointments are usually made for the life of the commission. Many statutes note this explicitly,<sup>31</sup> though some simply make no mention of appointment terms.

A smaller number of commissions have been created for longer lifespans, and have established term limits for appointees. For instance, the Defense Base Closure and Realignment Commission's statute included term limits tied to the end of a congressional session.

(d) Terms.—

(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

(2) The Chairman of the Commission shall serve until the confirmation of a successor.<sup>32</sup>

Similarly, the United States Commission on International Religious Freedom was originally designed to last for four years and members served two-year terms.<sup>33</sup>

In nearly all cases, commission statutes provide that any vacancies on the commission “shall not affect the powers of the Commission but shall be filled in the same manner in which the original appointment was made.”<sup>34</sup>

## Commission Member Compensation and Travel Expenses

### *Compensation*

Most congressional commissions do not compensate their members for service time. For example, the Evidence-Based Policymaking Commission prohibited its members from being paid for their service. Its statute stated:

(f) COMPENSATION.—Members of the Commission shall serve without pay.<sup>35</sup>

A few commissions have compensated their members. Among these commissions, the statute usually specifies a level of compensation, typically set in accordance with one of the federal pay scales and 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, which has a basic annual rate of pay of \$176,300 in 2022.<sup>36</sup> Additionally, these statutes commonly include language that prohibits a current government employee serving on the commission from receiving additional compensation for their commission service (though they may still receive reimbursement for travel expenses). For example, the Antitrust Modernization Commission's statute provided for member

<sup>31</sup> See, for example, the Benjamin Franklin Tercentenary Commission (P.L. 107-202, §5(e), 116 Stat. 741 (2002)).

<sup>32</sup> P.L. 101-510, §2902(d), 104 Stat. 1808 (1990).

<sup>33</sup> P.L. 105-292, §201(c), 112 Stat. 2798 (1998). “(c) Terms.—The term of office of each member of the Commission shall be 2 years. Members of the Commission shall be eligible for reappointment to a second term.” The United States Commission on International Religious Freedom has been periodically reauthorized since its creation in the 105<sup>th</sup> Congress (P.L. 106-55, P.L. 107-228, P.L. 112-75, P.L. 113-271, P.L. 114-71). During the 107<sup>th</sup> Congress, the statute was amended to provide for two-year, staggered terms (P.L. 107-228; 2 U.S.C. §6431).

<sup>34</sup> For example, see Route 66 Centennial Commission. P.L. 116-256, §5(e), 134 Stat. 1144 (2020).

<sup>35</sup> P.L. 114-140, §3(f), 130 Stat. 319 (2016).

<sup>36</sup> Office of Personnel Management, “Salary Table No. 2022-EX: Rates of Basic Pay for the Executive Schedule (EX),” effective January 2022, at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/exec/html/EX.aspx>.

compensation (limited to Level IV of the Executive Schedule), included provisions related to federal officials serving on the panel, and provided for the reimbursement of travel expenses:

(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.<sup>37</sup>

### *Travel Expenses*

Most statutorily created congressional commissions have not compensated their members; almost all, however, have provided for reimbursement of expenses directly related to the service of commission members, such as travel costs. For example, the United States Commission on International Religious Freedom reimburses its members. Its statute states:

(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.<sup>38</sup>

The decision to compensate and reimburse commissioners can have consequences for the commission's makeup. Arguably, compensation may help entice qualified commission members to serve who would otherwise not be willing to do so. Similarly, reimbursement for travel and other expenses may help attract commission members to serve, particularly those whose commission service would require travel. On the other hand, compensation of commission members is likely to increase the overall cost of the commission, particularly among commissions designed to last for a long period.

### **Duties**

Statutes usually direct the commission to carry out specific tasks. These may include any combination of studying a problem, fact-finding, assessing conditions, holding hearings, conducting an investigation, reviewing policy proposals, making feasibility determinations, crafting recommendations, issuing reports, or other tasks.

The duties statutorily assigned to a commission can range from brief and general to lengthy and detailed. Some statutes include a relatively brief list of duties, while others may spell out in detail the items a commission is tasked to research, investigate, or report upon. For example, the Antitrust Modernization Commission statute included a brief section on four major duties assigned to the commission:

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<sup>37</sup> P.L. 107-273, §11055, 116 Stat. 1858 (2002).

<sup>38</sup> P.L. 105-292, §201(i), 112 Stat. 2798 (1998).

The duties of the Commission are—

- (1) To examine whether the need exists to modernize the antitrust laws and to identify and study related issues;
- (2) To solicit views of all parties concerned with the operation of the antitrust laws;
- (3) To evaluate the advisability of proposals and current arrangements with respect to any issues so identified; and
- (4) To prepare and submit to Congress and the President a report in accordance with section 11058.<sup>39</sup>

By contrast, the Financial Crisis Inquiry Commission was provided an extensive list of instructions for material to be assessed by the commission, including direction to investigate and report upon the role played by 22 specific factors in the then-recent economic downturn.<sup>40</sup>

## Hearings

Commissions commonly hear testimony from outside experts or government officials in the course of conducting a study, developing recommendations, or carrying out an investigation. Accordingly, most commissions are statutorily authorized to hold hearings as needed. For example, the Commission on Care’s statute states that

[t]he Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this section.<sup>41</sup>

Additionally, some commissions are also explicitly instructed to hold hearings as one of the commission’s key duties. Further, some commissions have been instructed to hold hearings in specific locations or receive testimony from particular groups of witnesses. For example, the National Commission on Crime Control and Prevention was directed to

[convene] field hearings in various regions of the country to receive testimony from a cross section of criminal justice professionals, business leaders, elected officials, medical doctors, and other persons who wish to participate.<sup>42</sup>

Further, in some cases, Congress may require that a commission’s hearings must be open to the public.<sup>43</sup> The National Prison Rape Reduction Commission’s statute stated:

(g) HEARINGS.

- (1) In General.—The Commission shall hold public hearings. The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out its duties under this section.<sup>44</sup>

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<sup>39</sup> P.L. 107-273, §11053, 116 Stat. 1856 (2002).

<sup>40</sup> P.L. 111-21, §5(c), 123 Stat. 1626 (2009).

<sup>41</sup> P.L. 113-146, §202(c)(1), 128 Stat. 1775 (2014).

<sup>42</sup> P.L. 103-322, §270004(b)(6), 108 Stat. 2092 (1994).

<sup>43</sup> Commissions that are subject to the requirements of the Federal Advisory Committee Act (FACA) may be required to hold public hearings. For additional information on FACA, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy.

<sup>44</sup> P.L. 108-79, §7(g)(1), 117 Stat. 984 (2003).

## Reports

Commission statutes commonly require the commission to produce one or more reports that outline their activities, findings, and/or legislative recommendations. In most cases, a single report is required; in other cases, commissions are required to make one or more initial or interim reports before the issuance of a final report. Commissions may be directed to submit their reports to Congress, the President, an executive agency, or some combination of Congress, the President, and an executive agency.

### *Final Reports*

Most congressional commissions are required to issue a final report. For example, the National Commission on the Structure of the Air Force was directed to issue a single final report:

Not later than February 1, 2014, the Commission shall report to the President and the congressional defense committees a report which shall contain a detailed statement of the conclusions of the Commission as a result of the study required by subsection (a), together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study.<sup>45</sup>

If a commission is required to make policy recommendations, Congress may direct that the final report contain legislative language to implement any recommendations. For example, the Commission to Study the Potential Creation of a National Women’s History Museum was required to submit draft legislation for Congress’s consideration:

(3) Legislation to carry out plan of action.—Based on the recommendations contained in the report submitted ... the Commission shall submit for consideration to the Committees on Transportation and Infrastructure, House Administration, Natural Resources, and Appropriations of the House of Representatives and the Committees on Rules and Administration, Energy and Natural Resources, and Appropriations of the Senate recommendations for a legislative plan of action to establish and construct the Museum.<sup>46</sup>

In addition to directing a commission to produce legislative language to implement its recommendations, Congress has sometimes enacted expedited, or “fast track,” rules in law providing for the consideration of legislation in one or both chambers. These statutory provisions contemplate that the House and Senate will consider certain bills or resolutions under expedited procedures instead of the regular parliamentary procedures used to consider most legislation.<sup>47</sup> Such expedited procedures are sometimes included in the authorizing language creating congressional advisory commissions, and establish special procedures for committee and floor action on the commission’s recommendations.<sup>48</sup> Such procedures establish strict deadlines on committee consideration of a bill embodying the commission’s recommendations and limit debate and amendment on the measure when it is considered on the chamber floor. Significantly, such “fast track” procedures allow a simple majority of the Senate to call up and reach a final vote on a commission bill without having to assemble a supermajority to end debate (invoke cloture).

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<sup>45</sup> P.L. 112-239, §363(b), 126 Stat. 1704 (2013).

<sup>46</sup> P.L. 112-240, §643(f)(1)(A), 126 Stat. 2361 (2013).

<sup>47</sup> For more information on expedited or “fast-track” legislative procedures, see, *Expedited or “Fast-Track” Legislative Procedures*, by Christopher M. Davis.

<sup>48</sup> For example, see, *“Fast Track” Legislative Procedures Governing Congressional Consideration of a Defense Base Closure and Realignment (BRAC) Commission Report*.

In some instances, the statute may additionally specify that minority or dissenting views may be included in the final report upon an individual member's request. For example, the Human Space Flight Independent Investigation Commission's statute provided that the final report "shall include any minority views or opinions not reflected in the majority report."<sup>49</sup>

### ***Initial or Interim Reports***

Some commission statutes require the commission to issue one or more initial or interim reports. Initial or interim reports may be designed to provide updates on the progress of a study, to share preliminary findings, to ensure federal agencies comply with the commission's requests, and/or to provide Congress with information about the commission's expenses.

For example, the Commission on Wartime Contracting in Iraq and Afghanistan's statute instructed the commission to "submit to Congress an interim report on the study... including the results and findings of the study as of [March 1, 2009]."<sup>50</sup> Similarly, other commission statutes have required the commission to issue interim reports on a regular basis prior to issuing a final report, or to provide other interim reports as deemed necessary by the commission. For example, the Creating Options for Veterans' Expedited Recovery Commission's statute directed the commission to submit interim reports both on a regular schedule and on an as-needed basis:

(1) Interim Reports.—

(A) In General.—Not later than 60 days after the date on which the Commission first meets, and each 30-day period thereafter ending on the date on which the Commission submits the final report under paragraph (2), the Commission shall submit to the Committees on Veterans' Affairs of the House of Representatives and the Senate and the President a report detailing the level of cooperation the Secretary of Veterans Affairs (and the heads of other departments or agencies of the Federal Government) has provided to the Commission.

(B) Other Reports.—In carrying out its duties, at times that the Commission determines appropriate, the Commission shall submit to the Committee on Veterans' Affairs of the House of Representatives and the Senate and any other appropriate entities an interim report with respect to the findings identified by the Commission.<sup>51</sup>

### ***Report Submission***

Approximately half of commissions submit their work product to both Congress and the President. Others typically submit to some combination of Congress, the President, and/or an executive branch official and executive agency. In some limited cases, the commission's statute does not specify to whom the report must be submitted.

When a commission reports to Congress, the statute may require that the report be transmitted to Congress generally;<sup>52</sup> to relevant committees; or to specific individuals, such as chamber or committee leaders. In some cases, these statutes also mandate that the commission make the final report publicly available. For example, the Commission on the Roles and Capabilities of the United States Intelligence Community was directed to make an unclassified version of its final

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<sup>49</sup> P.L. 109-155, §829(b), 119 Stat. 2944 (2005).

<sup>50</sup> P.L. 110-181, §841(d)(1), 122 Stat. 232 (2008).

<sup>51</sup> P.L. 114-198, §931(e)(1), 130 Stat. 722 (2016).

<sup>52</sup> In practice, reports that are directed to be submitted to Congress (without naming a specific individual or officer) are generally delivered to the Clerk of the House and the Secretary of the Senate.

report publicly available, with classified material made separately available to the President and the House and Senate intelligence committees:

[T]he Commission shall submit to the President and to congressional intelligence committees a report setting forth the activities, findings, and recommendations of the Commission, including any recommendations for the enactment of legislation that the Commission considers advisable. To the extent feasible, such report shall be unclassified and made available to the public. Such report shall be supplemented as necessary by a classified report or annex, which shall be provided separately to the President and the congressional intelligence committees.<sup>53</sup>

## **Powers**

Commission statutes generally provide the commission with authority to perform certain actions that help carry out its mission. Some of these powers, such as holding hearings, or obtaining administrative support from the General Services Administration (GSA) or another federal agency, are commonly granted to all commissions. The decision to grant other types of powers likely depends on the goal of the commission in question. For example, a commemorative commission may require the explicit authority to solicit or receive gifts or other commemorative items in order to carry out its mission, while a commission designed to perform an investigation may not.<sup>54</sup> By contrast, authority to obtain data from federal agencies may be of particular importance for a commission designed to investigate an event or issue, but less so for a commemorative commission.

## **Obtaining Information from Government Agencies**

Frequently, Congress tasks commissions with studying a public policy issue or conducting an investigation that requires information or data held by federal agencies. To these ends, Congress commonly statutorily authorizes commissions to obtain information from government agencies that may be necessary to carry out the commission's goals. For instance, the Commission on Care's statute authorized it to

secure directly from any Federal agency such information as the Commission considers necessary to carry out this section. Upon request of the Chairperson of the Commission, the head of such agency shall furnish such information to the Commission.<sup>55</sup>

Although this authority may require government entities to cooperate with the commission, an enforcement mechanism is not typically specified. Absent an enforcement mechanism, such as subpoena authority, the commission might not have recourse against a government entity that did not comply with its requests.

In at least one instance, a commission was required to notify a standing committee of jurisdiction in either the House or Senate of any difficulty in obtaining information from government agencies. The Commission on Wartime Contracting in Iraq and Afghanistan's statute included the following instruction:

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<sup>53</sup> P.L. 103-359, §904(c), 108 Stat. 3459 (1994).

<sup>54</sup> For additional information on commemorative commissions, see CRS Report R41425, *Commemorative Commissions: Overview, Structure, and Funding*, by Jacob R. Straus.

<sup>55</sup> P.L. 113-146, §(c)(2), 128 Stat. 1775 (2014).

(2) Inability to obtain documents or testimony.—In the event the Commission is unable to obtain testimony or documents needed to conduct its work, the Commission shall notify the committees of Congress of jurisdiction and appropriate investigative authorities.<sup>56</sup>

## Subpoena Authority

On occasion, Congress has granted a commission the authority to issue subpoenas. Commission subpoena authority is relatively rare. Since the 101<sup>st</sup> Congress (1989-1990), 12 congressional commissions have been identified as having subpoena authority. **Table 2** lists these commissions.

**Table 2. Congressional Commissions with Subpoena Authority**  
101<sup>st</sup> Congress to 117<sup>th</sup> Congress, First Session

Commission Name	Statutory Citation
Commission on the State of the U.S. Olympics and Paralympics	P.L. 116-189, 134 Stat. 943 (2000)
Cyberspace Solarium Commission	P.L. 115-232, 132 Stat. 2140 (2018)
Financial Crisis Inquiry Commission	P.L. 111-21, 123 Stat. 1628 (2009)
Human Space Flight Independent Investigation Commission	P.L. 109-155, 119 Stat. 2943 (2005)
National Prison Rape Reduction Commission	P.L. 108-79, 117 Stat. 985 (2003)
National Commission on Terrorist Attacks Upon the United States	P.L. 107-306, 116 Stat. 2410 (2002)
National Commission for the Review of the Research and Development Programs of the United States Intelligence Community	P.L. 107-306, 116 Stat. 2440 (2002)
National Commission for the Review of the National Reconnaissance Office	P.L. 106-120, 113 Stat. 1622 (1999)
National Gambling Impact Study Commission	P.L. 104-169, 110 Stat. 1485 (1996)
National Commission on Restructuring the Internal Revenue Service	P.L. 104-52, 109 Stat. 509 (1995)
Commission on Protecting and Reducing Government Secrecy	P.L. 103-236, 108 Stat. 527 (1994)
National Commission on Financial Institution Reform, Recovery, and Enforcement	P.L. 101-647, 104 Stat. 4890 (1990)

**Source:** CRS analysis of Congress.gov database query, 101<sup>st</sup> Congress to 117<sup>th</sup> Congress.

The apparent infrequency with which policymakers have given subpoena authority to congressional commissions may stem from concerns about the misuse of the authority; private citizens are not subject to the check of periodic elections the way that Members of Congress are, and thus may have fewer incentives to use subpoena authority in an appropriate manner. For example, the National Gambling Impact Study Commission’s statute authorized the use of subpoenas for documents, but not to compel the testimony of witnesses.<sup>57</sup> Supporters of the legislation noted that providing for limited subpoena authority in this manner “should satisfy those who are concerned that the commission might misuse its subpoena authority to create some sort of public spectacle,”<sup>58</sup> and “will allow the Commission to conduct its study while, at the

<sup>56</sup> P.L. 110-181, §841(e)(2), 122 Stat. 233 (2008).

<sup>57</sup> P.L. 104-69, §5(b), 110 Stat. 1485 (1996).

<sup>58</sup> Sen. John Glenn, “The National Gambling Impact Study Commission Act,” remarks in the Senate, *Congressional Record*, daily edition, vol. 142 (July 17, 1996), p. S7976.

same time, it allays the fears of those who thought the subpoena power would be overly intrusive.”<sup>59</sup>

Alternatively, legislators may be concerned that a commission might use subpoenas for political purposes. Supporters of the proposed legislation creating the Financial Crisis Inquiry Commission, for instance, emphasized that by requiring the concurrence of at least one minority-appointed member to issue a subpoena, the legislation would “[provide] additional assurance that the examination undertaken by the commission, and in its exercise of subpoena authority, will not be politicized.”<sup>60</sup>

On the other hand, if a commission is likely to need information, documents, or testimony from agencies, firms, or individuals who may not be cooperative, subpoena authority may be a valuable tool.

## **Other Powers**

Congress has frequently granted past commissions other powers intended to facilitate their day-to-day operations. Many of these powers are intended to ease the logistical burden of finding meeting or office space, procuring equipment, or obtaining other necessary services. Some of the most common provisions permit commissions to

- use the U.S. mail system in the same manner as federal agencies;
- enter into contracts;
- obtain services from outside experts and consultants;
- request the detail of federal employees to the commission;
- obtain administrative support (such as assistance with human resources, obtaining office and meeting space, and procuring equipment) from the General Services Administration or another federal agency; and
- accept gifts, donations, and/or volunteer services.<sup>61</sup>

For example, the Virgin Islands of the United States Centennial Commission was granted some version of each of the aforementioned authorities, using statutory language common to commission statutes. **Table 3** reports the Virgin Islands of the United States Centennial Commission’s power and the authorizing language.

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<sup>59</sup> Rep. Henry Hyde, “National Gambling Impact and Policy Commission Act,” remarks in the House, *Congressional Record*, daily edition, vol. 142 (July 22, 1996), p. H8035.

<sup>60</sup> Rep. Ted Poe, “Fraud Enforcement and Recovery Act of 2009,” remarks in the House, *Congressional Record*, daily edition, vol. 155 (May 18, 2009), p. H5687.

<sup>61</sup> Commissions without the statutory authority to solicit funds or accept donations are generally prohibited from engaging in those activities. See U.S. Government Accountability Office, *Principles of Federal Appropriations Law: Third Edition, Volume II*, GAO-06-382SP, February 2006, pp. 6-162, <https://www.gao.gov/assets/gao-06-382sp.pdf>.

**Table 3. Example Statutory Language of Other Commission Powers**  
Virgin Islands of the United States Centennial Commission

Power	Statutory Language
Request detail of federal employees	(c) Detail of Federal Employees.—Upon request of the Commission, the Secretary of the Interior or the Archivist of the United States may detail, on a reimbursable basis, any of the personnel of the Department of the Interior or the National Archives and Records Administration, respectively to the Commission to assist the Commission to perform the duties of the Commission.
Obtain services from outside experts and consultants	(d) Experts and Consultants.—The Commission may procure such temporary and intermittent services from experts and consultants as are necessary to enable the Commission to perform the duties of the Commission.
Use of the U.S. Mail	(b) Mails.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.
Accept gifts, donations, and/or volunteer services	(d) Gifts, Bequests, Devises.—The Commission may solicit, accept, use, and dispose of gifts, bequests, or devises of money, services, or property, both real and personal, for the purpose of aiding or facilitating the work of the Commission.
Obtain administrative support	(e) Available Space.—Upon request of the Commission, the Administrator of General Services shall make available to the Commission, at a normal rental rate for Federal agencies, such assistance and facilities as may be necessary for the Commission to perform the duties of the Commission.
Enter into contracts	(f) Contract Authority.—The Commission may enter into contracts with and compensate the Federal Government, State and local government, private entities, or individuals to enable the Commission to perform the duties of the Commission.

**Source:** CRS analysis of the Virgin Islands of the United States Centennial Commission (P.L. 114-224, §§5-6, 130 Stat. 922 (2016)).

Most commission statutes typically specify that the General Services Administration (GSA) may provide administrative support services, upon request of the commission. The GSA, however, need not be the source of administrative support for the commission. Some commissions may employ the services of Washington Headquarters Services, an organization within the Department of Defense that provides administrative and other services to defense-related commissions.<sup>62</sup> In some cases, administrative support may be provided by other, specified entities. For example, the Commission on Servicemembers and Veterans Transition Assistance’s statute provided that

The Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Labor shall, upon the request of the chairman of the Commission, furnish the Commission, on a reimbursable basis, any administrative and support services as the Commission may require.<sup>63</sup>

## Rules and Procedures

Most commission statutes do not include a detailed set of rules and procedures that the commission must follow when conducting its business. However, the statutory language often provides a general structure, including a mechanism for selecting a chair, specifying the size of a quorum, and procedures for creating rules.

<sup>62</sup> For more information, see <http://www.whs.mil>.

<sup>63</sup> P.L. 104-275, §704(c), 110 Stat. 3349 (1996).

## **Selection of Chair**

Commission statutes specify a process for the selection of the commission chair, vice chair, or cochairs. Most commonly, the commission votes to select the chair or cochair. For example, the Western Hemisphere Drug Policy Commission’s statute directed that “[a]t the initial meeting, the Commission shall select a Chairperson from among its members.”<sup>64</sup>

When the commission does not select its chair, the next most frequent arrangement is for the President, congressional leaders, or a designated executive branch official to appoint the chair(s). In many cases, a single individual is provided the power to appoint the chair(s). For example, the President appointed the chair of the National Commission on Terrorist Attacks Upon the United States.<sup>65</sup> In contrast, the Senate majority leader, the Senate minority leader, the Speaker of the House, and the House minority leader jointly appointed the chair of the Commission on the Abraham Lincoln Study Abroad Fellowship Program.<sup>66</sup>

In a smaller number of cases, the authorizing statute designates the chair(s). For example, the Commission on Indian and Native Alaskan Health Care’s statute directed that the Secretary of Health and Human Services serve as the chair.<sup>67</sup>

Arrangements that provide for singular chairs may improve the commission’s efficiency, particularly if partisan or ideological divisions become an issue in organizational decisionmaking. On the other hand, cochair arrangements may lend partisan or ideological balance to the activities of the commission, and allow for “buy-in” from a greater range of stakeholders.

## **Quorum Requirements**

Most commission statutes specify a quorum threshold for the commission’s meetings. Most commission statutes set a quorum at a majority of members, though a small number of statutes have established quorum thresholds of less than a majority,<sup>68</sup> and others a supermajority.<sup>69</sup> In some cases, statutes have permitted commissions to conduct hearings and receive testimony with less than a quorum present.<sup>70</sup>

## **Supermajority Requirements**

Most commission statutes are silent on whether a majority is required to approve a final report or other commission actions. Some statutes, however, state explicitly that the commission’s final report shall contain only those recommendations agreed to by a majority of its members.<sup>71</sup>

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<sup>64</sup> P.L. 114-323, §603(f)(2), 130 Stat. 1938 (2016).

<sup>65</sup> P.L. 107-306, §603(a)(1), 116 Stat. 2408 (2002).

<sup>66</sup> P.L. 108-199, §104(c)(1), 118 Stat. 436 (2004).

<sup>67</sup> P.L. 106-310, §3307(b)(4), 114 Stat. 1216 (2000).

<sup>68</sup> For example, the statute creating the Commission on Broadcasting to the People’s Republic of China established a quorum of one-half of appointed members (P.L. 102-138, §248(a)(4), 105 Stat. 705 (1991)).

<sup>69</sup> For example, the statute creating the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism established a quorum of two-thirds (six of its nine members; P.L. 110-53, §1853(e), 121 Stat. 502, (2007)).

<sup>70</sup> See, for example the United States Semiquincentennial Commission (P.L. 114-196; §4(e), 130 Stat. 686 (2016)).

<sup>71</sup> See, for example, the Commission on Prevention of Weapons of Mass Destruction Proliferation and Terrorism (P.L. 110-53, §1857, 121 Stat. 504 (2007)).

Without specific guidance or vote thresholds, commissions generally operate by simple majority agreement.

In a smaller number of cases, Congress specified that the commission must adopt its report or agree to particular actions with agreement from greater than a majority of commissioners. For example, the National Bipartisan Commission on the Future of Medicare's statute required that the commission's report include only "those recommendations, findings, and conclusions of the Commission that receive the approval of at least 11" of its 17 commissioners—a threshold of approximately two-thirds.<sup>72</sup>

Supermajority thresholds may guarantee the incorporation of the views of a minority of commissioners, thereby helping to ensure a final report that is more widely supported than might otherwise be the case. This may improve the commission's standing in the eyes of legislators and the public, ensure some degree of bipartisan support for the final work product, and result in a set of recommendations with a wider base of support in Congress.

On the other hand, the lack of a supermajority requirement does not preclude the achievement of a bipartisan or nonpartisan work product from the commission. In fact, some commissions have delivered their recommendations with more than a majority, even when their statutory language did not require such an outcome. For example, all members of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) and the Commission on the Prevention of Weapons of Mass Destruction unanimously agreed to the respective final reports.<sup>73</sup>

Supermajority requirements cannot fully guarantee widespread agreement among commissioners. If the commission's policy recommendation is particularly partisan or ideological in nature, a commission may simply reflect such divisions rather than overcome them. This may ultimately lead to a report where commissioners are unable to agree on recommendations to address the most critical topics. Alternatively, the commission may produce final work products with fewer specific, concrete findings or recommendations, and more general statements that are less likely to generate wide dissent.

## **Formulating Other Rules of Procedure**

Commission statutes do not generally prescribe many operational rules or internal procedures. Some statutes have explicitly granted the commission the right to establish its own rules. For example, the National Gambling Impact Study Commission was authorized to "establish by majority vote any other rules for the conduct of the Commission's business, if such rules are not inconsistent with this Act or other applicable law."<sup>74</sup>

Without explicit direction, the commission may adopt formal rules, choose to adopt rules on a more informal or as-needed basis, or operate without formal rules and instead rely on collegiality as the basis for proceedings. Whether the commission ultimately adopts a set of formal, written rules or instead relies on informal norms may be determined by a variety of factors, including the size of the commission, frequency of meetings, member preferences, the level of collegiality, and any statutory procedural guidance.

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<sup>72</sup> P.L. 105-33, §4021(f), 111 Stat. 350 (1997).

<sup>73</sup> The final reports can be obtained at National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, at <https://www.9-11commission.gov/report/911Report.pdf>; and Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, *World At Risk* (New York: Vintage Books, 2008), at <https://policy.defense.gov/portals/11/Documents/hdasa/references/world-at-risk-study.pdf>.

<sup>74</sup> P.L. 104-169, §3(c), 110 Stat. 1483 (1996).

## Staff

Most commission statutes authorize the commission to hire staff. Often, commissions are explicitly authorized to hire a lead staffer (i.e., a “staff director,” or “executive director”) and additional staff as needed. Rather than a specifically mandated staff size, many commissions are instead authorized to appoint a staff director and other personnel as necessary, subject to the limitations of available funds.

Most congressional commissions are also authorized to hire consultants, procure intermittent services, and request that federal agencies detail personnel to aid the commission’s work.

## Commission Staff Hiring, Compensation, and Benefits

Typically, commission statutes provide authority to hire staff and set salaries. Most commission statutes specify who on the commission may make hiring decisions. Most commonly, hiring authority is provided to the entire commission.<sup>75</sup> In some circumstances, the chair(s) may hire staff either on their own or upon the approval of the rest of the commission,<sup>76</sup> or a designated lead staffer is tasked with hiring, often upon the approval of the commission.<sup>77</sup>

In most cases, the commission determines staff compensation. However, commission statutes frequently establish a maximum rate of pay for commission staff, typically a particular level of the Executive Schedule or General Schedule. In cases where staff compensation limits are specified, Level V of the Executive Schedule is the most common limit chosen for commissions.<sup>78</sup> In 2022, positions at level V of the Executive Schedule carried annual pay rates of \$163,500.<sup>79</sup>

In order to facilitate the hiring process, Congress authorizes most commissions to hire without regard to certain laws that govern pay rates and the competitive service. For example, the National Commission for the Review of the Research and Development Programs of the United States Intelligence Community’s statute authorized the commission to hire a staff director and other personnel without regard to particular sections of the *U.S. Code*, but with a specified limit on the rate of pay:

The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable

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<sup>75</sup> See, for example, the Congressional Oversight Panel (P.L. 110-343, §125(d)(1), 122 Stat. 3792 (2008)).

<sup>76</sup> See, for example, the Human Space Flight Independent Investigation Commission (P.L. 109-155, §827(a), 119 Stat. 2944 (2005)) and the Commission on Ocean Policy (P.L. 106-256, §3(d), 114 Stat. 646 (2000)).

<sup>77</sup> See, for example, The National Bipartisan Commission on the Future of Medicare (P.L. 105-33, §4021(d)(2), 111 Stat. 349 (1997)).

<sup>78</sup> Other staff pay ceilings used in commission statutes include Level IV of the Executive Schedule (see, for example, the Western Hemisphere Drug Policy Commission, P.L. 114-323, §605(b)(1), 130 Stat. 1939 (2016)); and the maximum rate payable for grade GS-15 of the General Schedule (see, for example, the Commission on the National Military Museum, P.L. 106-65, §2908(c)(2), 113 Stat. 884 (1999)).

<sup>79</sup> Office of Personnel Management, “Salary Table No. 2022-EX: Rates of Basic Pay for the Executive Schedule (EX),” effective January 2022, at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/22Tables/exec/html/EX.aspx>.

to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.<sup>80</sup>

Some (but not all) statutes additionally provide that commission staff shall be considered federal employees for the purpose of benefits. For example, the Presidential Advisory Commission on Holocaust Assets in the United States' statute stated the following:

(5) Employee benefits.—

(A) In General.—An employee of the Commission shall be an employee for the purposes of chapters 83, 84, 85, 87, and 89 of title 5, United States Code, and service as an employee of the Commission shall be service for purpose of such chapters.

(B) Nonapplication to members.—This paragraph shall not apply to a member of the Commission.<sup>81</sup>

Decisions related to staff size and compensation will likely have a significant effect on the overall cost of the commission. Reducing staff compensation or size may arguably result in considerable cost savings. On the other hand, reducing staff compensation may make it more difficult to hire qualified staff and limiting staff size could negatively affect the ability of a commission to function efficiently, resulting in a lower-quality work product or increasing the amount of time needed for the commission to complete its mission.

## **Other Staff**

In addition to hiring staff, Congress grants many commissions the authority to obtain services from detailees, consultants, and volunteers.

### *Detailees*

Congress authorizes most commissions to request detailees from federal agencies. In almost all cases, the statute also specifies that any individual detailee “shall retain the rights, status, and privileges of his or her regular employment without interruption.”<sup>82</sup>

Some commission statutes provide the authority to request detailees, but place limits on which federal employees may be detailed. For example, the Virgin Islands of the United States Centennial Commission had the authority to request detailees from only the Department of the Interior and the National Archives and Records Administration.<sup>83</sup> Conversely, some commission statutes specifically prohibit the detail of certain employees. For example, the Human Space Flight Independent Investigation Commission cannot receive detailees from NASA.<sup>84</sup>

Statutes granting detailee authority also generally specify whether or not an agency will be reimbursed by the commission for the cost of the detail. Providing for detailees on a reimbursable basis may make agencies more willing to comply with a commission's detail requests, but may also increase the overall cost of the commission.

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<sup>80</sup> P.L. 107-306, §1004(a)(1), 116 Stat. 2441 (2002).

<sup>81</sup> P.L. 105-186, §5(c)(5), 112 Stat. 615 (1998).

<sup>82</sup> See, for example, the Commission on Wartime Contracting in Iraq and Afghanistan (P.L. 110-181, §841(e)(5), 122 Stat. 234 (2008)).

<sup>83</sup> P.L. 114-224, §5(c), 130 Stat. 922 (2016).

<sup>84</sup> P.L. 109-155, §827(c), 119 Stat. 2944 (2005).

### ***Experts and Consultants***

In addition to detailees, Congress often grants commissions the authority to procure services from experts and consultants in accordance with specific laws, and subject to certain limitations on pay. As with commission staff, the pay of experts and consultants is often limited to a particular level of either the Executive Schedule or General Schedule. For example, the Guam War Claims Review Commission’s statute included language that allowed for the procurement of experts and consultants, with a limitation on compensation. The statute said:

(c) Experts and Consultants.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS-15 of the General Schedule. The services of an expert or consultant may be procured without compensation if the expert or consultant agrees to such an arrangement, in writing, in advance.<sup>85</sup>

### ***Volunteer Services***

Some commission statutes authorize the commission to accept volunteer and uncompensated services. For example, the John F. Kennedy Centennial Commission’s statute provided for the commission to accept these services. It stated:

Volunteer and Uncompensated Services.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept and use voluntary and uncompensated services as the Commission determines necessary.<sup>86</sup>

### **Costs and Funding**

Aggregate costs of congressional commissions vary widely, ranging from several hundred thousand dollars to over \$10 million. Expenses for any individual commission are difficult to predict and depend on a variety of factors, the most important of which include the number of paid staff and the duration of the commission. Some commissions have few or no full-time staff; others, such as the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), employ a large staff.<sup>87</sup> The 9/11 Commission received more than \$10 million in appropriations and employed a full-time staff of approximately 75.<sup>88</sup>

Secondary factors contributing to commission expenses include the number of commissioners, how often the commission meets or holds hearings, and the number and size of publications produced by the commission. Although Congress funds many commissions through congressional

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<sup>85</sup> P.L. 107-333, §6(c), 116 Stat. 2874 (2002).

<sup>86</sup> P.L. 114-215, §5(e), 130 Stat. 831 (2016). 31 U.S.C. §1342 places limitations on voluntary services. It states, “An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”

<sup>87</sup> According to the 9/11 Commission’s archived website, it employed approximately 75 individuals over the course of its existence. For more information, see National Commission on Terrorist Attacks Upon the United States, “Commission Staff,” at [https://govinfo.library.unt.edu/911/about/bios\\_staff.htm](https://govinfo.library.unt.edu/911/about/bios_staff.htm).

<sup>88</sup> P.L. 108-11, 117 Stat. 591 (2003); P.L. 108-207, 118 Stat. 556 (2004).

appropriations, some commissions, especially commemorative commissions, are statutorily authorized to accept donations of money and volunteer labor, which may offset costs.

### **Authorization of Funds**

Congress may choose to authorize the appropriation of funds for the operations of a commission. Commission statutes that authorize funding often choose a dollar amount, without additional specific qualifications. For example, the Guam War Claims Review Commission’s statute states, “[t]here is authorized to be appropriated \$500,000 to carry out this act.”<sup>89</sup> Other commission statutes provide for authorizations that correspond to fiscal years, or otherwise limit how long funding may be available to the commission. The Commission to Study the Potential Creation of a National Museum of the American Latino received the following authorization:

There are authorized to be appropriated for carrying out the activities of the Commission \$2,100,000 for the first fiscal year beginning after the date of enactment of this Act and \$1,100,000 for the second fiscal year beginning after the date of enactment of this Act.<sup>90</sup>

In other cases, statutes may authorize the appropriation of “such sums as necessary” for the expenses of a commission rather than a specific dollar amount.<sup>91</sup>

A smaller number of commission statutes—usually for commemorative commissions—explicitly prohibited the commission from receiving federal funds. In lieu of federal funding, Congress typically authorizes these commissions to fundraise and accept donations, gifts, and/or volunteer efforts. Section 10 of the statute creating the John F. Kennedy Centennial Commission simply reads, “[n]o Federal funds may be obligated to carry out this Act.”<sup>92</sup> Similarly, the World War I Centennial Commission’s statute provided that

[g]ifts, bequests, and devises of services or property, both real and personal, received by the Centennial Commission under section 6(g) shall be the only source of funds to cover the costs incurred by the Centennial Commission under this section.<sup>93</sup>

### **Sources of Funding**

Congress funds some commissions through specific appropriations. For example, the Helping to Enhance the Livelihood of People Around the Globe Commission’s statute authorized the appropriation of “such sums as may be necessary.”<sup>94</sup> The FY2004 and FY2005 appropriations acts included specific line items for the commission.<sup>95</sup>

Congress funds other commissions through an agency appropriation or another mechanism. For example, the Commission on the Implementation of the New Strategic Posture of the United States’ statute directed that the commission’s funding be “provided from amounts appropriated for the Department of Defense.”<sup>96</sup> The statute creating the Motor Fuel Tax Enforcement Advisory

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<sup>89</sup> P.L. 107-333, §7, 116 Stat. 2875 (2002).

<sup>90</sup> P.L. 110-229, §333(e), 122 Stat. 787 (2008).

<sup>91</sup> See, for example, the Helping to Enhance the Livelihood of People Around the Globe Commission (P.L. 108-199, §637(i)(1), 118 Stat. 105 (2004)).

<sup>92</sup> P.L. 114-215, §10, 130 Stat. 833 (2016).

<sup>93</sup> P.L. 112-272, §7(f), 126 Stat. 2452 (2013).

<sup>94</sup> P.L. 108-199, §637(i)(1), 118 Stat. 105 (2004).

<sup>95</sup> P.L. 108-199, 118 Stat. 89 (2004); and P.L. 108-447, 118 Stat. 2909 (2004).

<sup>96</sup> P.L. 109-163, §1051(e), 119 Stat. 3433 (2006).

Commission provided that “[s]uch sums as are necessary shall be available from the Highway Trust Fund for the expenses of the Commission.”<sup>97</sup>

## **FACA Applicability**

The Federal Advisory Committee Act (FACA) mandates certain structural and operational requirements, including formal reporting, administration, and oversight procedures, for certain federal advisory bodies that advise the executive branch.<sup>98</sup>

Whether FACA requirements apply to a particular advisory commission may depend on a number of factors, including whether most commission appointments are made by members of the legislative or the executive branch, and to which branch of government the commission must issue its report, findings, or recommendations.

Often, a statute will direct whether FACA shall apply to a given commission. For example, the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (P.L. 110-53) was explicitly exempted from FACA. Its statute stated, “[t]he Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.”<sup>99</sup> Some commission statutes exempt a commission from FACA, but still mandate FACA-like requirements, such as holding public hearings or making available a public version of the final report.<sup>100</sup>

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<sup>97</sup> P.L. 109-59, §11141(d), 119 Stat. 1960 (2005).

<sup>98</sup> For more information on FACA requirements and factors affecting FACA applicability, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy.

<sup>99</sup> P.L. 110-53, §1856(a), 121 Stat. 504 (2007).

<sup>100</sup> See, for example, the Joint Federal-State Commission on Policies and Programs Affecting Alaska Natives (P.L. 101-379, 104 Stat. 478 (1990)), the Presidential Advisory Commission on Holocaust Assets in the United States (P.L. 105-186, 112 Stat. 611 (1998)), and the Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism (P.L. 110-53, 121 Stat. 501 (2007)).

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